Federal Labour
Standards Review

Examen des normes
du travail fédérales

Fairness at Work

Federal Labour Standards for the 21st Century

Technical Annex

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PURPOSE OF THE TECHNICAL ANNEX

On October 30, 2006, the Commission for the Review of Part III on the *Canada Labour Code* (Labour Standards), submitted its final report entitled, *Fairness at Work: Federal Labour Standards for the 21st Century*, available at: http://www.hrsdc.gc.ca/en/labour/employment_standards/arthur_report/toc.shtml. The document was the product of extensive research and consultation.

The report does not reference its research sources. To bridge this gap, the attached Technical Annex and the four appendices briefly summarize and provide references and links to commentaries, research papers, academic texts, data tables, legislation, learned articles, news reports, stakeholder submissions, as well as other sources. The documents allow readers to explore the basis for statements and recommendations made in the report, and further examine areas which may have only been briefly examined by the Commission. This additional material is designed to help users achieve a better understanding of the report and its rationale.

How to use the Technical Annex

The Technical Annex is not a "stand alone" document. It must be read in combination with the report. Each chapter in the Technical Annex corresponds to the same chapter in the report. The annex identifies specific sections, paragraphs and pages in the report which need clarification and references. It then cross references to points made in the report and in external reference material. While the Technical Annex frequently provides short summaries of the referenced material, it is not meant to reproduce the details contained in those reference documents. Rather, by following the references and links set out in the Technical Annex, users may analyze the reference material first hand.

The references outlined in the Technical Annex match the date of the report dated October 2006. They identify sources used at the time the report was being researched and prepared in 2004-2006.

Strategic Policy, Analysis and Workplace Information Directorate

Labour Program

Human Resources and Social Development Canada

Chapter One

Introduction

ONE
INTRODUCTION

SECTION 3: WHAT ARE LABOUR STANDARDS?

Page 5, Paragraph 3
For an overview of the development of early labour standards law and policy, see Roberts (1969), Taylor (1972), Henriques (1979) and Arthurs (1985).

Page 5, Paragraph 4
Section 168(1) of the *Canada Labour Code* establishes the primacy of Part III over other laws, contracts or arrangements:

> This Part and all regulations made under this Part apply notwithstanding any other law or any custom, contract or arrangement, but nothing in this Part shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to the employee than his rights or benefits under this Part.

Nonetheless, Part III provides different mechanisms that allow more flexibility for certain standards. These derogation provisions are discussed in more detail in Chapter 7 of the main report.

SECTION 4: LABOUR STANDARDS IN THE FEDERAL DOMAIN

Page 7, Paragraph 1
Professor Robert Howse's research report to the Commission, Howse (2005), provides an analysis of the federal government's constitutional jurisdiction in the field of labour standards, which is established by section 91 of the *Constitution Act, 1867*.

Page 8, Paragraph 1
For detailed information on the characteristics of employers and workers in federally regulated workplaces, see Bisaillon and Wang (2006), which

discusses findings of Statistics Canada's Federal Jurisdiction Workplace Survey, the first survey of federally regulated employers.

Page 9, Paragraph 3
Maximum hours of work for transportation workers are set out in Transport Canada rules and regulations for the purposes of ensuring public safety. Part III refers to those rules for transportation workers, instead of establishing maximum hours for labour standards purposes. It should be noted, however, that managers, superintendents, members of designated professions and employees who exercise management functions are excluded by the provisions of Part III dealing with hours of work. See Chapter 4 of main report for more details.

- For motor vehicle operators, such as truck drivers and couriers, see the Commercial Vehicle Drivers Hours of Service Regulations, 1994, made pursuant to the *Motor Vehicle Transport Act, 1987*.
- For air crews, see Part VIII of the Canadian Aviation Regulations, established pursuant to the *Aeronautics Act*.
- For railway workers, see the Work/Rest Rules for Railway Operating Employees, developed pursuant to section 20(1) of *the Railway Safety Act*.
- For maritime workers, see the Maritime labour standards, set out in Part III of the Marine Personnel Regulations made pursuant to the Canada Shipping Act, R.S. 1985, c. S-9.

Page 9, Paragraph 3
The *Canadian Human Rights Act* (CHRA) prohibits discrimination based on gender (s. 3(1)), including pregnancy and childbearing (s. 3(2)), discrimination based on disability (s. 3(1), s. 25 "disability") and sexual harassment (s.14), which are also prohibited or dealt with by Part III of the *Canada Labour Code* (more specifically, divisions II, VII, XIII, XIII.1 and XV.1). The other prohibited grounds of discrimination enumerated in section 3(1) of the CHRA are race, national or ethnic origin, colour, religion, age, sexual orientation, marital status, family status and conviction for which a pardon has been granted. The issue of the overlap of human rights and labour standards is discussed in Chapter 6 of the main report.

SECTION 5: STARTING POINTS: SOME NON-CONTROVERSIAL ASSUMPTIONS CONCERNING THE REFORM OF LABOUR STANDARDS LEGISLATION

Page 10, Paragraph 1
Arthurs (1985, 103) provides an historical perspective on the purposes of labour standards.

Page 12, Paragraph 2
For a more detailed discussion and analysis of economic, demographic and regulatory and policy changes affecting today's Canadian workplaces, see Chapter 2 of the main report

Chapter Two

The New Economy, A Changing Society and a Renewed Agenda For Labour Standards

TWO
THE NEW ECONOMY, A CHANGING SOCIETY AND A RENEWED AGENDA FOR LABOUR STANDARDS

SECTION 2: THE CHANGING CHARACTER, NEEDS AND ASPIRATIONS OF THE WORKFORCE

Changing demographics of the Canadian workforce

Page 18
Percentages of women in the workforce were taken from O'Donnell (2006, 13).

Percentages of households with single breadwinners and with both partners working were taken from the 1961 Census (Statistics Canada 1963, table 89), Johnson, Lero and Rooney (2001, 19) and The Vanier Institute of the Family's *Profiling Canada's Families* (3rd ed.) (Sauvé 2006 technical note 42), which states:

> For the majority of Canadian couples, both partners are now in the paid workforce. According to 2001 Census, in about 62% of all couples, both the husband and wife are in the paid labour force. This is up from 59% in the mid 1990s. Looking solely at couples with children under the age of 18, in over three-quarters of these families, both spouses have earnings. This is up from 57% in 1980 and 73% in 1990. The trend is clearly rising.

The proportion of families headed by a single female parent was reported in O'Donnell (2006, 38).

Figures on the role of immigration in population growth and the percentage of recent immigrants who are members of a visible minority were taken from the Canadian Labour and Business Centre (2004, 2, 5).

The percentage of Torontonians who are members of a visible minority is based on the 2001 Census, which is presented in an online Statistics Canada table entitled *Community Highlights for Toronto* (Statistics Canada 2002a). Additional information is also provided in Appendix 1 of the 2006 Scott, Selbee and Reed's Report: The Changing Face of Canadian Immigrants, using 2001 Census data.

According to Statistics Canada (2003b), birth rates in Canada declined from 28.9 births per 1,000 individuals in the mid-1960s to 10.5 births per 1,000 individuals in 2001. Figures on the median age within the core working group of the Canadian population were taken from Statistics Canada (2002b).

Projected shortages of skilled workers

Page 19, Paragraph 4
Knowledge Matters: Skills and Learning for Canadians is a report prepared by HRDC (2002a) that focuses on what can be done to ensure that Canada benefits from a skilled workforce in today's knowledge-based global economy. As well as dealing with other issues, section 1 provides information on shortages of skilled workers in specific professions, such as nursing, engineering, plumbing and construction trades.

Data on job vacancies was presented by the Canadian Federation of Independent Business in Bruce and Dulipovici (2001, 2). Conference Board of Canada forecasts of labour shortages are presented in Barr et al. (2000, 51).

HRDC (2002a, 8) and Schetagne (2001, 13–14) attribute emerging shortages to the aging of the workforce, a falling participation rate among older workers, and declining birth rates.

Changing skill and education requirements of the Canadian workforce

Page 19, Paragraph 2
Data on workers pursuing adult education and training can be found in Johnson, Lero and Rooney (2001, 13). For further information on education and training from an employer's perspective, see Zhengxi and Tremblay (2003, 13) and Arrowsmith *et al.* (2001, 23–24).

Estimates of the percentage of new jobs that will require post-secondary education and new jobs likely to be held by those with less than a high-school education are provided in *Job Futures 2000: World of Work — Overviews and Trends* (HRDC 2000, 5).

Demographic and skill requirement trends within the federal jurisdiction

Page 20, Paragraph 1
The age and gender distribution in federally regulated workplaces is discussed in Chapter 1 and is based on the analysis of HRSDC (2006) using data from the 2004 Federal Jurisdiction Workplace Survey.

Growing conflict between work and family responsibilities

Page 20, Paragraph 3
For reviews of research on work–life-balance issues faced by dual-income and single-parent families, see the research reports presented to the Commission by Fredman (2005) and Lowe (2005). These issues and their effects on worker health and productivity are addressed in greater detail in Chapter 7 of this report.

Constraints of women's labour market participation

Page 20, Paragraph 3
Chaykowski (2006, 6–7), Marshall (2003, 7, 9) and Cooke-Reynolds and Zukewich (2004, 26) observe that family and caregiving responsibilities often have the effect of encouraging women to perform non-standard forms of employment, such as part-time and temporary work, despite such work arrangements often resulting in low pay and limited access to benefits.

For a discussion of how a lack of affordable child-care and elder-care supports constrains women's labour market participation, see HRDC (2002b).

The growing importance of tolerance and inclusiveness

Page 20, Paragraph 4
On difficulties faced by immigrant workers because of credential non-recognition, as prejudice in the workplace, see Esses, Dietz and Bhardwaj (2006).

On the potential effects of reducing work hours on encouraging older workers to remain in the workforce, see Schetagne (2001, 10–21) and OECD (2005a).

On the challenges facing Aboriginal peoples in the Canadian labour market, see HRDC (2002a, 39) and Royal Commission on Aboriginal Peoples (1996, 931–933).

Human rights law has reshaped workers' and employers' expectations about workplace relations. As England, Wood and Christie (2005) note:

> Modern human rights legislation has, and will likely continue to fuel the expectations of Canadian workers for more "rights". Not only has the quantity of such legislation proliferated since the 1950s but, more importantly, the thrust of the legislation has been transformed from prohibiting deliberate, spite-based discrimination in the early days to prohibiting non-wilful, non-spite based, "systemic" discrimination in the 1980s. (Paragraph 1.25)

Part III provisions complementing or supplementing human rights legislation include s. 206 (maternity leave), s. 206.1 (parental leave), s. 239.1(3) (re-integration of injured workers), s. 204 and s. 206 (re-assignment of pregnant and nursing workers), s. 247.1 (sexual harassment prevention) and s. 182 (suppression of discriminatory pay practices).

Some of the Part III amendments adopted after the *Canada Labour Code* was enacted in 1965 include s. 206 (maternity leave), s. 206.1 (parental leave), s. 206.3 (compassionate care leave), s. 182 (wage rates), s. 247.1 (sexual harassment) and s. 33 of the Canada Labour Standards Regulations (definition of family with regard to bereavement leave).

Job mobility in a knowledge economy

Page 21, Paragraph 3
Skuterud found that the percentage of employed workers who report seeking new jobs roughly doubled between the mid-1970s and mid-1990s. He attributes this in part to a general reduction in the costs of looking for an alternative job. Specifically he identifies new communications technologies, a decline in employee loyalty, and reduced risk of being caught by their employer in seeking alternative employment as important factors in explaining this trend (Skuterud 2005, 21).

However, according to Morissette (2004, 13), between 1989 and 1999 permanent quit rates in fact declined from 9.2 percent to 7.3 percent. Part of the decrease in quit rates was due to the decrease in hiring that took place in the 1990s. The apparent disconnection between workers' search behaviour and quit rates is explained by Heisz (2002), who examined job stability over the 1977–2001 period. He found that job stability fell during the 1980s but increased steadily through the 1990s, offsetting the declines of the previous decade.

The shift from manufacturing to service-sector employment in Canada is documented by Heisz *et al.* (2005, 36, 44–75).

Heisz *et al.* (2005, 91, 92) found that computer and telecommunications, a sector that combines high-technology manufacturing and service activities, grew particularly fast in the 1990s and was concentrated in only a few large Census Metropolitan Areas (CMAs). Immigration was the most important source of population growth in the country's CMAs, and it contributed significantly to these CMAs' stock of human capital. Other CMAs had to rely on internal migration to fuel their expansion needs. Of these CMAs, the smallest — those with populations fewer than 200,000 — lost population and disproportionately lost more young and highly educated population to other, larger CMAs. Those losses will detract from the capital available in the former CMAs in the future.

Page 22, Paragraph 2
According to a survey conducted in 1994–1995 on employer-supported career or job-related training, the OECD (1999, 141) found that Canada ranked 5th out of 11 countries surveyed, with 34 percent of Canadian workers aged 25 to 54 years having received such training, compared with 55 percent in the United Kingdom, 44 percent in the United States, and 35 percent in Australia. A more recent OECD survey (see OECD 2005b, 325), conducted in 2003, indicated that 29 percent of Canadian workers aged between 25 and 65 participated in non-formal job-related continuing education and training, compared with 34 percent of workers in the United Kingdom, 44 percent in the United States, and an average of 45 percent in Scandinavian countries. In addition, the Institute for Management Development (IMD 2004, 656) ranked Canada 20th out of 60 economies in a survey regarding the level of priority employers place on employee training. For information on possible barriers to employer investment in training, such as time, money, lack of information, and return-on-investment concerns, see Goldenberg (2006, 20–24).

SECTION 3: THE NEW ECONOMY: COMPETITIVENESS AND VULNERABILITY

Increased competitiveness of markets

Page 24, Paragraph 3
For general discussions of the economic integration of international product and capital markets and their effect on competition for investment and market shares see Banks (2006, 79).

Figures on exports as a share of the Canadian economy are taken from *Trade Update* (2006, 21; 2001, 6). *Trade Update* (2006, 14) also shows that merchandise imports have grown 6 percent while commercial services imports have grown 7 percent between 2000 and 2005.

The percentage of merchandise export trade with the United States is taken from *Trade Update* (2006, 24).

Increased reliance on skills, knowledge and technology for competitiveness

Page 24, Paragraph 4
For general discussions of the importance of these factors to Canadian competitiveness, see Courchene (2001); and for a broader study on OECD economies, based on knowledge and technology, see OECD (1996a). See also HRDC (2002a, section 3) for details on the increased value of particular skills and knowledge as assets for employment in Canadians firms.

For a discussion of the greater demand for skilled labour and of declining employment opportunities for the less skilled in Canada, with a particular focus on distributional outcomes, see Heisz, Jackson and Picot (2002, 8–13) and Saunders (2006, 8).

Volatility of markets

Page 25, Paragraph 2
The Secretariat of the UN Conference on Trade and Development (2006) warns that world markets have shown signs of greater volatility, which has been known to precede financial crises in the past. The report suggests a multilateral effort to restore stability. For seminal discussions of how such trends have led to a restructuring of production in advanced industrialized countries, see Piore and Sabel (1984) and Harrison (1994).

Restructuring of production in Canada

Page 25, Paragraph 2
Saunders (2006, 7–12) discusses the significant pressures faced by Canadian employers as a result of the rapid pace of economic and technological change and their impact on contractual work arrangements. See Chaykowski and Gunderson (2001, 30–34) for information on the impact of globalization on labour markets.

The relationship between the operational reorganization of businesses and the growth of non-standard work is discussed in Bernier, Vallée and Jobin (2003, 26–36). In addition, Betcherman and Lowe (1997, 33–37) identified six components of business reorganizations resulting from increased competition and the need to secure higher levels of productivity: global integration, technology-based strategies, innovations in work organization, business rationalisation, high-performance work practices and new forms of labour relations.

Impacts of increased competition on federal jurisdiction employers

Page 26, Paragraph 1
Examples of legislation restricting foreign ownership in federally regulated industries include the Broadcasting Act, s. 3(1)(a); the *Telecommunications Act*, 1993, s. 16; the Canadian Telecommunications Common Carrier Ownership and Control Regulations; and the Bank Act, ss. 372–394 (Constraints on Ownership).

Chow (2005) provides information on the impact of deregulation in the inter-provincial trucking industry. Bernstein (2005, section 2.2) discusses the restructuring of work in the air transportation, banking and call-centre services and some consequences for employment relationships.

Transformation of working time practices

Page 26, Paragraph 3
The increasing use of flexible work schedules, the unpredictable work hours, increases in long work hours, and the effects these developments on workers' health and personal lives are discussed in Chapter 7 of the main report and the accompanying technical annex.

Rise of income inequality

Page 26, Paragraph 4
Trends in median real household incomes and the underlying causes of these trends are discussed in Industry Canada (2004, 114–115).

For an analysis of trends in the income of top income earners in Canada, see Saez and Veall (2003).

Trends in the proportion of low-income working Canadians within the Canadian workforce between the years 1981 and 2004 are reported in Morissette and Picot (2005, 8–13). The proportion of prime-age working Canadians (between the ages of 25 and 64 years) earning less than $10.00 per hour (in 2001 dollars) was 16 percent in 2004 (Morissette and Picot 2005, 8). Chaykowski (2005a), citing Morissette and Zhang (2001), reports that the overall percentage of working Canadians earning incomes below the low-income cut-off ranged between 12 and 14 percent from 1993 to 1998.

Income inequality in Canada is higher than in Europe but lower than in the United States, according to a study by Picot and Myles (2005), which summarizes the findings of recent studies examining family income inequality and low income. Income inequality is measured by the ratio of the income of a family at the 90th percentile (here, a family for which 90 percent have lower incomes and only 10 percent have higher incomes) to a family at the 10th percentile (the family for which 90 percent have higher family incomes and only 10 percent lower). In the late 1990s, families at the 90th percentile of the income distribution in Canada had incomes about four times higher than those of their counterparts at the 10th percentile. This ratio was 5.4 in the United States and 4.5 in the United Kingdom. In the mainland European countries included in the study, it ranged from 2.9 to 3.3 (Germany, Netherlands, Belgium, Finland and Sweden).

Canada largely avoided the rise in income inequality observed in both the United States and the United Kingdom throughout the 1980s and early 1990s. However, evidence indicates this began to change during the 1990s when gains associated with economic expansion in Canada went mainly to higher income families.

While incomes among the wealthiest 20 percent of families rose by about 10 percent, total family income stagnated among the poorest 20 percent of families between 1990 and 2000. The result was a moderate increase in family income inequality in Canada.

In addition, the mid-1990s saw an unexpected increase in the low-income rate in Canada, as it deviated from its expected trend based on the unemployment rate. As unemployment fell in the mid-1990s, the low-income rate continued to rise.

This finding may be attributed to earnings difficulties among poorer families and to declining social transfers in the mid- to late 1990s.

For data on the increasing inequality and polarization of incomes in Canada within lower and middle-income levels, see Industry Canada (2004, 113–114). Information on the demographics of the distribution of low incomes can be found in Heisz, Jackson and Picot (2002), Morissette and Picot (2005) and Morissette and Johnson (2004).

Rise of precarious work

Page 27, Paragraph 1

For a discussion of precarious work, as well as a review of literature on the subject, see Stéphanie Bernstein's report to the Commission (Bernstein 2005). While there is no single definition of what is termed "precarious work" or "vulnerable work," Bernstein identifies factors characterizing such work, on which there seems to be consensus: low pay, job insecurity and limited or inadequately enforced legal protections. However, non-standard work and vulnerable work are not synonymous. Vulnerability stems from work that is poorly paid and provides only limited or inadequate legal protection for working conditions that inherently pose risks to the worker's physical or psychological security. These characteristics are not offset by either reasonable prospects for labour market advancement or other compensating opportunities for benefits.

Figures on trends in the proportion of the workforce in part-time and temporary employment and own-account self-employment are taken from Vosko, Zukewich and Cranford (2003, table 1).

According to Vosko, Zukewich and Cranford (2003, 20) the percentage of self-employed workers in the Canadian labour force rose from 7 percent to 10 percent between 1989 and 2002. They also found that a quarter of such workers became self-employed because they could not find appropriate work (2003, 16). As well, CIBC's Decima survey (see CIBC 2005, 3) reported that 21 percent of female and 33 percent of male self-employed workers indicated that they were pushed into self-employment because of poor employment opportunities.

Based on a CPRN-Ekos survey, Lowe and Schellenberg (2001) found that 76 percent of temporary employees would prefer permanent employment. Statistics Canada (2003a, section G) reports that one in four part-time employees would prefer full-time work.

Fleury and Fortin (2004) and Saunders (2006) provide data on the disadvantages associated with non-standard work, such as low income and lack of access to benefits.

According to Fleury and Fortin (2004, 53) in 2001, 17.9 percent of low-income workers had access to life or disability insurance, 15.1 percent of them had access to a pension plan offered by their employer, and only 10.8 percent were members of a union. But the proportions of these groups of workers who did not have a low income were, respectively, 61.5, 48.7 and 30.3 percent.

Saunders (2006, 24) citing data from Marshall (2003), reported that, "while 58 percent of full-time workers and 57 percent of permanent workers were covered by an insurance package ... in the year 2000, only 17 percent of part-time workers and 14 percent of temporary workers benefited from [a similar package]." As well, Marshall (2003), as cited in Saunders (2006, 17), states that in 2000, 30 percent of low-paid employees (earning less than $10.00 per hour) had temporary employment. In comparison, 16 percent of temporary workers earned between $10.00 and $19.99 per hour, and only 9 percent earned $20.00 or more.

Chaykowski (2005b, 16) reports that roughly 37 percent of the own-account self-employed earned less than $20,000 in 1999. He also found that 42 percent of full-year full-time self-employed workers — compared with only 11 percent for full-year full-time employees — had low earnings (Chaykowski 2005b, 29). Access to benefits was also a problem for the self-employed: in 2000, about one-quarter had their own purchase benefit plans, and 15 percent obtained coverage through an association (Chaykowski 2005b, 17).

Information on the correlation between low income and non-standard work can also be found in Morissette and Picot (2005), Chaykowski (2006a, 9–10, 13–16), and Kapsalis and Tourigny (2004a).

Based on a self-administered survey of 800 Canadian workers, Lewchuk *et al.* (2005) find that precarious workers, and particularly temporary agency and short-term workers, reported more employment-relationship uncertainty (defined as work, earnings and scheduling uncertainty) and more employment-relationship workload (defined as effort finding or getting more work, having multiple employers, or having multiple worksites and effort spent as a result of harassment and discrimination

in the workplace) than full-time permanent workers. The study also shows that high employment-relationship uncertainty and employment-relationship workloads were correlated with "poorer self-reported health, more frequent tension at work, and more frequent reporting that 'everything was an effort'" (Lewchuk et al. 2005: 22). For further information on precarious work and on health and safety implications, see Quinlan (1999); Quinlan, Mayhew and Bohle (2001); and Bohle and others (2004).

Saunders (2006) and Janz (2004) provide a profile of low-paid full-time workers and their difficulty in moving up the income ladder.

Low pay is far more likely, and far more likely to be persistent, among women than among men, and the incidence of low pay among recent immigrants who are visible minorities is about twice what it is for the workforce as a whole. See Saunders (2006, 17–19), Morissette and Picot (2005, 9–13, table 5), Morissette and Zhang (2001), Fleury and Fortin (2004, 53–55), and Janz (2004).

Underlying causes of the rise of precarious work

Page 27, Paragraph 4
Reasons for the decline in the relative wages of less-skilled workers in Canada are discussed in Heisz, Jackson and Picot (2002). On the role of core/contingent workforce strategies in generating pay inequality and precarious employment relationships, see Harrison (1994).

The rate of unionization in the Canadian private sector declined from 25.9 percent to 18.2 percent between 1984 and 2003 (Akyeampong 2004, table 2). Unionized workers tend to enjoy higher wages than those of their non-unionized counterparts and markedly greater access to benefits programs (Akyeampong 2004, 5).

Morissette and Picot (2005, 16) find that the incidence of low pay among recent immigrants who are visible minorities is much higher than it is among Canadian-born visible minorities. The authors speculate that this may reflect disadvantages particular to immigrants to Canada, including language and cultural barriers and difficulty in obtaining recognition in Canada for foreign-acquired credentials.

Based on data taken from the 2001 Census, and the Survey of Labour and Income Dynamics, Chueng (2005) concludes that workers of colour are more likely to experience low pay and precarious employment. This study also highlights the fact that even Canadian-born workers of colour are more likely to have low earnings and experience unemployment, although they tend to be more highly educated than the rest of the workforce.

Hatfield (2004) analyzes five groups of the Canadian population who are highly susceptible to persistent low income. These groups are unattached persons aged 45 to 64 years, disabled persons, recent immigrants, lone parents and Aboriginal people living off reserve. According to the study, in 1996 people belonging to at least one of these groups made up 23.8 percent of the total population under 60 years of age but accounted for 67.6 percent of those facing persistent low income between 1996 and 2000. The author finds that persistent low income is linked to social exclusion and the lack of social support networks.

Precarious work in the federal jurisdiction

Data profiling precarious work in the federal jurisdiction is provided in the supplementary information for Chapter 10. That data shows a concentration of low-paid, temporary work within the road transportation industry and within small firms. Data discussed in Chapter 9 of the main report also indicates that violations of Part III appear to be disproportionately high in the road transportation industry and among small employers.

General considerations on economic costs and benefits of labour standards and decent working conditions

Page 28, Paragraph 3

Gunderson (2005) provides the Commission with a review of the literature on potential costs to employers entailed by labour standards, and the risks that competitive pressures will generate adverse impacts on workers. His analysis suggests a cautionary approach with respect to labour standards: not all labour standards are the same with respect to their cost implications and their possible offsetting benefits. For example, some theory and evidence suggest that some of the costs of enhanced labour standards may be shifted back to immobile workers in the form of lower wages. There is less likelihood of unintended consequences for other labour policies such as advance notice policies that may foster efficient job matching, rights to refuse overtime, the use of overtime premium rates rather than quantity restrictions on maximum-hours regulations, and protection against harassment, which may improve morale and workplace productivity.

The empirical evidence reviewed by Gunderson on the whole does not show significant adverse effects of labour standards in Canada. It identifies a possible marginal cost increase for hiring, attributable to hours-of-work and overtime standards; conflicting evidence on the impact of maternity leave on women's employment; and a likely small negative impact on

the employment of young workers, attributable to increases in minimum wages. The latter is discussed further in the notes to Chapter 10. The evidence reviewed by Gunderson suggests that generous termination of severance provisions in Europe may have had an impact on employment levels there. Canadian (including federal) standards on these subjects are much more flexible than their European counterparts, and there is no evidence that they have negatively impacted employment. If anything, notice and planning provisions provided in standards dealing with employment termination may provide efficiency gains through better job matching and transitions.

Arguments for the potential economic benefits of good employment practices and labour policy and standards supporting them are canvassed more fully in the technical annex provided for Chapters 7 and 11.

On the extent to which labour standards remain an appropriate platform for protecting workers

Page 29, Paragraph 3
Federally Regulated Employers – Transportation and Communications presented a brief to the Commission in which it argues that the best way to protect vulnerable workers is not by amending Part III but by doing more as a society, such as creating better educational and training opportunities.

The question of whether labour legislation is the best or a good way to address a number of the challenges facing the most vulnerable members of the workforce is addressed in detail in Adell (2006) and in Saunders (2006). Saunders argues that with the growth of non-standard work and particularly of self-employment, access to legislated employment standards and non-wage benefits and protections dependent on the traditional definition of the employment contract (employee-employer relationship) is an increasingly limited platform because of its diminishing reach. The author suggests that other policy platforms, such as standards and benefits that apply to all work contracts, and access to such entitlements on a "career" basis or on a community or occupational association basis (including collective bargaining), or even on a universal basis, should be put in place to ensure that Canadians have decent working and living conditions.

SECTION 4: LABOUR STANDARDS AND ECONOMIC SUCCESS

Costs of current federal labour standards

Page 31, Paragraph 5
A survey of federal jurisdiction employers done for the 1997 Evaluation of Federal Labour Standards (Phase I) reported that only 18 percent of employers believed that the cost implications of Part III labour standards for their firm were greater than the benefits. The authors of the Evaluation conclude that:

> Generally, the survey results are consistent with the view that labour standards have only a modest influence on a firm's profitability or outputs. If labour standards impose, as the surveys suggest, only small overall payroll or administrative costs, one should not expect a tight linkage to corporate profit levels and/or growth. (HRDC 1997)

The results of the 2004 Federal Jurisdiction Workplace Survey (FJ indicate that in a number of respects the working conditions of federal jurisdiction workers are substantially higher than minimum standards outlined in Part III. For instance,

- Less than 0.1 percent of the federal workforce receives the minimum wage;
- More than half of federal jurisdiction workers earn more than $20.00 per hour;
- 72 percent of federal jurisdiction employers offer three weeks of paid vacation leave to employees with five or more years of service; Part III only requires that this be provided to employers with six or more years of service; and
- 57 percent of federal employers offer some form of a personal support program to employees (workplace safety and health, employee performance evaluation or progressive disciplinary procedures), though these are not required by Part III.

More than half of companies reporting that employees worked overtime in 2004 said that employees could refuse overtime under one or more of the following circumstances: seniority, or previous amount of hours recently worked. There is currently no right to refuse overtime under Part III.

In addition, the survey indicates that:

- Just under 50 percent of employers in the federal jurisdiction, employing nearly 85 percent of the federal jurisdiction workforce, provide four weeks of paid vacation after 10 years, though four weeks of vacation are not currently required by Part III after any length of service; and
- 47 percent of federal companies, employing 75 percent of the federal workforce, provide more than the nine days of paid public holidays required by Part III.

In two recent studies, the OECD has noted that Canada's employment laws are flexible in comparison with those of other OECD countries, and they do not recommended lowering employment protection laws as a way to increase labour utilization rates (OECD 2004 and OECD 2005c).

Impacts of globalization on labour standards

Page 32, Paragraph 1
Theories suggesting that globalization will increase competitive pressures on labour costs and labour standards are surveyed in Banks (2006). The majority of empirical studies reviewed by the Commission conclude that countries like Canada, with strong, secure infrastructures and well-prepared workforces, can afford to require good terms and conditions of employment and may even obtain some competitive advantages from doing so. For example, Flanagan (2003) concludes there is no empirical evidence that open trade is producing a race to the bottom in working conditions or labour standards or that countries with low labour standards gain competitive advantage in international markets. Moreover, he finds the evidence seems to indicate that poor labour conditions often signal low productivity, or are one element of a package of national characteristics discouraging foreign direct investment (FDI) or inhibiting export performance. Kucera (2001), OECD (1996b), and OECD (2000) draw similar conclusions, observing that advanced industrialized economies have considerable advantages in attracting FDI and competing in world product and service markets, which generally outweigh the cost implications of higher labour standards. Banks (2006) concludes that the competitive advantages of advanced industrialized countries, derived from good infrastructure and well-prepared workforces, generally outweigh the cost implications of higher labour standards.

Gunderson (2005), however, cautions on the basis of his own review of studies that there is some evidence that investment will gravitate toward countries and jurisdictions within countries and some evidence of downward harmonization of labour standards, but nonetheless concludes that the

costs of labour standards are not likely to be a prominent determinant of business investment or plant location decisions (Gunderson 2005, 8–13).

Labour standards and Canadian competitiveness

Page 32, Paragraph 4
The above considerations suggest that high labour standards are unlikely to adversely affect the competitiveness of a country like Canada. This is consistent with the findings of the World Economic Forum (2006), which ranks the following countries, many of which have labour standards more stringent than those of Canadian jurisdictions, as the 10 most competitive in the world:

1. Switzerland
2. Finland
3. Sweden
4. Denmark
5. Singapore
6. United States of America
7. Japan
8. Germany
9. Netherlands
10. United Kingdom

As Flanagan (2003, 16) points out, 90 percent of international variation in real labour costs is associated with cross-country differences in labour productivity. Thus, most of the difference in wage rates between low- and high-wage countries provides the low-wage countries with no competitive advantage. Nonetheless, there are significant differences in unit labour costs, taking productivity into account) between some developing countries and advanced industrialized countries such as Canada (see Banks 2006, 82, and sources cited therein). While unit cost differences matter in some industries, they probably cannot be attributed to the sort of labour standards found in Part III, given the low cost that such standards actually impose (see notes above in this section). Moreover, such unit cost differences are more likely due to structural labour market conditions that cannot be affected through regulation or deregulation, such as the abundance of labour relative to capital in many developing countries (see Freeman 2005). They are also probably due in part to the observed increase or decrease in real wages associated with democracy or its absence, as documented in Rodrik (1999).

Further, literature reviewed in Sharpe (2006) suggests that productivity growth rates is key to Canadian economic well-being and competitiveness and that those growth rates are mainly determined by factors other than

labour costs, whether as a result of labour laws or labour markets. To the extent that labour legislation has been observed to negatively affect productivity, this has been a result of forms of worker protection (such as very strong job security provisions), which are largely absent in Canada, including in the federal jurisdiction. The gap in productivity growth rates between Canada and the United States in recent years appears to be largely attributable to the fact that high-technology industries have grown at a disproportionately fast rate during that time and represent a larger fraction of the U.S. economy (McKinsey Global Institute 2001). It is thus reasonable to infer that deregulating federal labour standards would do little or nothing to improve Canada's overall competitive position.

There is some evidence that well-designed labour laws and policies can make a positive contribution to productivity. Kucera (2001) suggests that core labour standards (freedom of association, the right to organize unions, freedom from discrimination and the elimination of child labour and forced labour) may in fact be integral to other elements of the social, political and regulatory environment necessary to attract significant FDI because they promote social and political stability and growth in the domestic market. The OECD (2000, 19) also suggests that core labour standards can increase growth and efficiency by raising skill levels in the workforce and by encouraging innovation. In a similar vein, Esping-Anderson and Regini (2000) argue that firms and countries that choose to compete on quality, rather than on mere price, need qualified, dependable and cooperative workforces and that this is why many firms provide high wages and good working conditions. Gunderson (2002) finds that a cluster of advanced work practices appear to make a significant contribution to productivity. These practices include:

- Job design that broadens and deepens the range of tasks or responsibilities, expands job autonomy, and relies on teamwork;
- Employee involvement in decision making;
- Compensation practices linking pay to performance of individuals or groups;
- Employee training, especially on-the-job training;
- Flexible working-time rules and teleworking; and
- Following non-discriminatory hiring practices and expanding hiring and promotion opportunities of minority groups.

Labour standards in legislation such as Part III tend to provide a minimum, but universally applicable, floor of protections. This means that they will tend to have a less significant impact on workplace practices than the core labour standards referred to above, but will not necessarily lead to the adoption of advanced practices of the sort studied by Gunderson

(2002). However, they may serve to provide some protection to employers adopting advanced practices against short-term competitive pressures by ensuring a level playing field of good employment practices required of all employers. This may be particularly relevant where competitive advantages that tend to outweigh labour-cost considerations are relatively evenly distributed, making labour-cost advantages more important (Banks 2006). Labour standards can also facilitate job-matching in layoff situations by providing notice of termination of employment and facilitating planning processes to deal with mass layoffs (Gunderson 2005; England 2005, section 5). Finally, they can also play a supporting role in facilitating training and life-long learning within the workforce, as discussed in Chapter 11.

Chapter Three

Setting the Bar: What Labour Standards Are Appropriate for the Federal Jurisdiction?

THREE
SETTING THE BAR: WHAT LABOUR STANDARDS ARE APPROPRIATE FOR THE FEDERAL JURISDICTION?

SECTION 2: COMPARING FEDERAL LABOUR STANDARDS WITH THOSE IN OTHER JURISDICTIONS

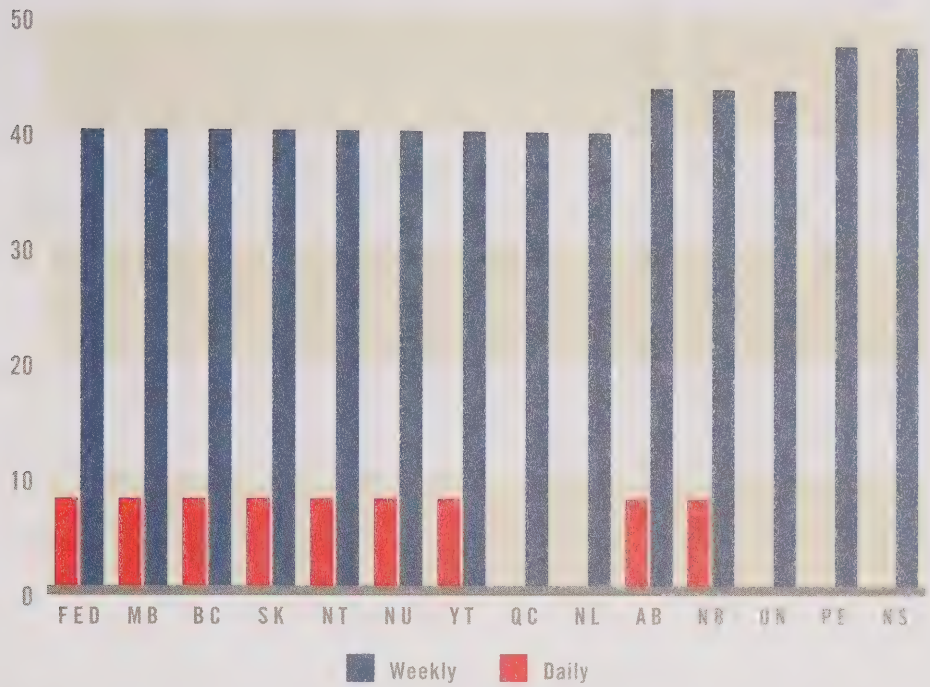
Page 44, Paragraphs 2 and 4
For an international comparison of labour standards, see Block (2003 and 2005). Block concludes in his 2005 executive summary that "Overall, the results indicate that the Federal Jurisdiction provides its employees with a high level of core labour standards if the comparator group is the other Canadian jurisdictions and the United States. On the other hand, for family related standards, and if the comparator group is the fourteen European countries, the Federal Jurisdiction provides standards at a moderate level."

Page 44, Paragraph 4
The Organisation for Economic Co-operation and Development (OECD) produced a study entitled *Employment Protection Regulation and Labour Market Performance*, which is included as Chapter 2 in "OECD Employment Outlook 2004." The OECD Employment Outlook is OECD's annual assessment of labour market developments and prospects in its member countries. OECD (2004) ranks Canada as the third lowest OECD member countries with regard to the strictness of employment protection legislation.

Page 44, Paragraphs 2 and 3; Page 45, Paragraphs 1 and 3
The following are summary tables comparing key labour standards legislation across Canada as of October 1, 2006.

Standard Hours of Work

Daily and Weekly Standard Hours of Work (Overtime Threshold); General Provisions

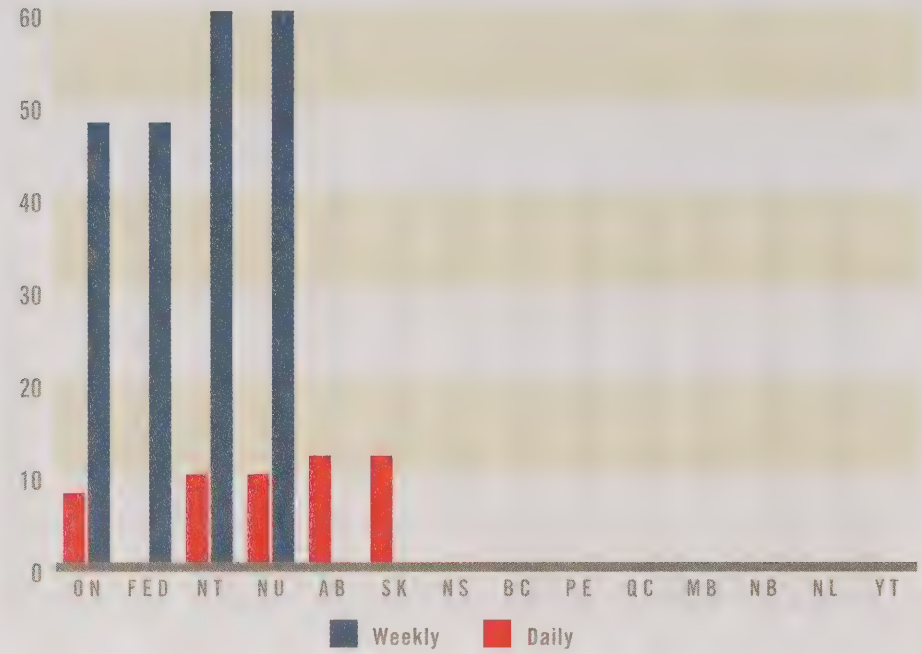


Note: Exemptions or different standards may apply to certain occupations and industries. Some jurisdictions allow variances, modified schedules and averaging agreements. Five provinces (Quebec, Newfoundland and Labrador, Ontario, Prince Edward Island and Nova Scotia) do not set standard daily hours of work. In British Columbia, employees are entitled to two times their regular wage rate for any time worked in excess of 12 hours in a day.

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Maximum Hours of Work

Maximum Daily and Weekly Hours of Work; General Provisions



Note: Exemptions or different standards may apply to certain occupations and industries. Some jurisdictions allow variances, modified schedules and averaging agreements. Most jurisdictions do not set maximum daily or weekly hours of work. However, minimum rest periods are usually provided for and employees may refuse to work overtime, in specified circumstances, in some provinces.

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Minimum Wage

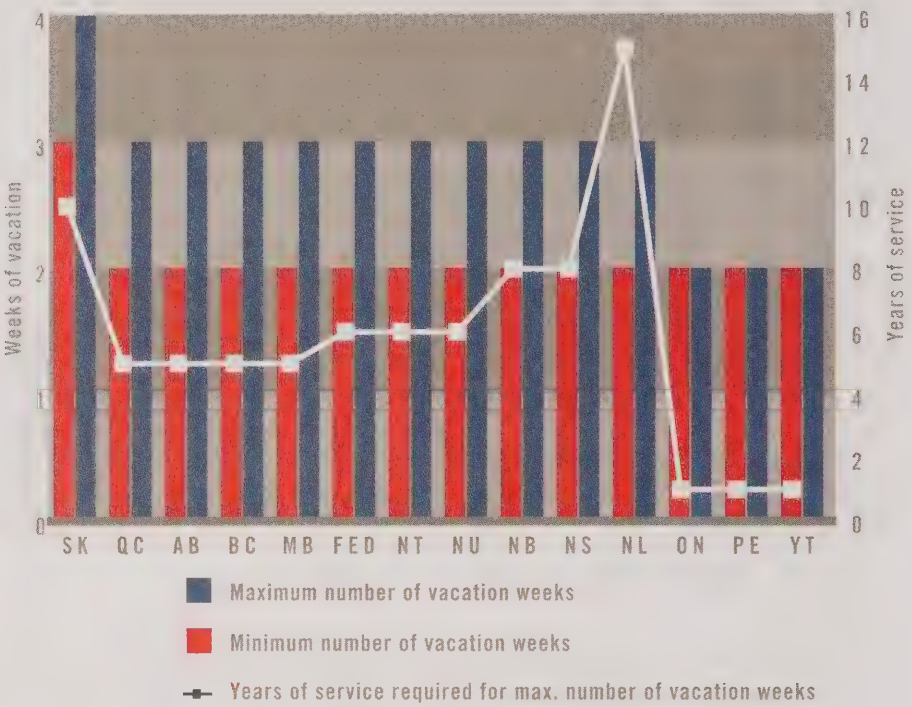
General Hourly Minimum Wage Rates

Note: Exemptions or different minimum wage rates may apply to certain industries and categories of workers. The federal minimum wage rate is the applicable general adult minimum wage rate of the province or territory where the employee is employed.

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Annual Vacations with Pay

Minimum and Maximum Number of Weeks of Annual Vacation Provided by Statute for Employees with One Year of Continuous Service or More; General Provisions

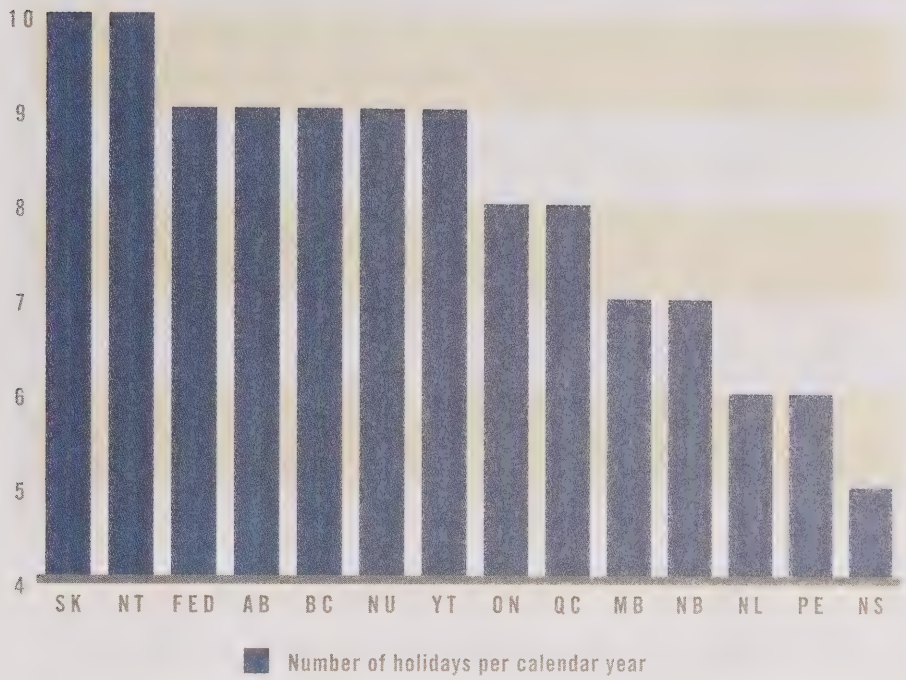


Note: Exemptions or different standards may apply to certain occupations and industries. Some jurisdictions allow annual vacations to be postponed or waived. Wages included in the calculation of vacation pay, notice requirements, vacation scheduling and restrictions on the division of vacation time vary across jurisdictions. Employees in Quebec who have at least one year of continuous service but who do not qualify for three weeks of vacation may take one week of vacation without pay (in addition to the two weeks of vacation with pay).

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Statutory Holidays

Minimum Number of Statutory Holidays with Pay per Calendar Year; General Provisions

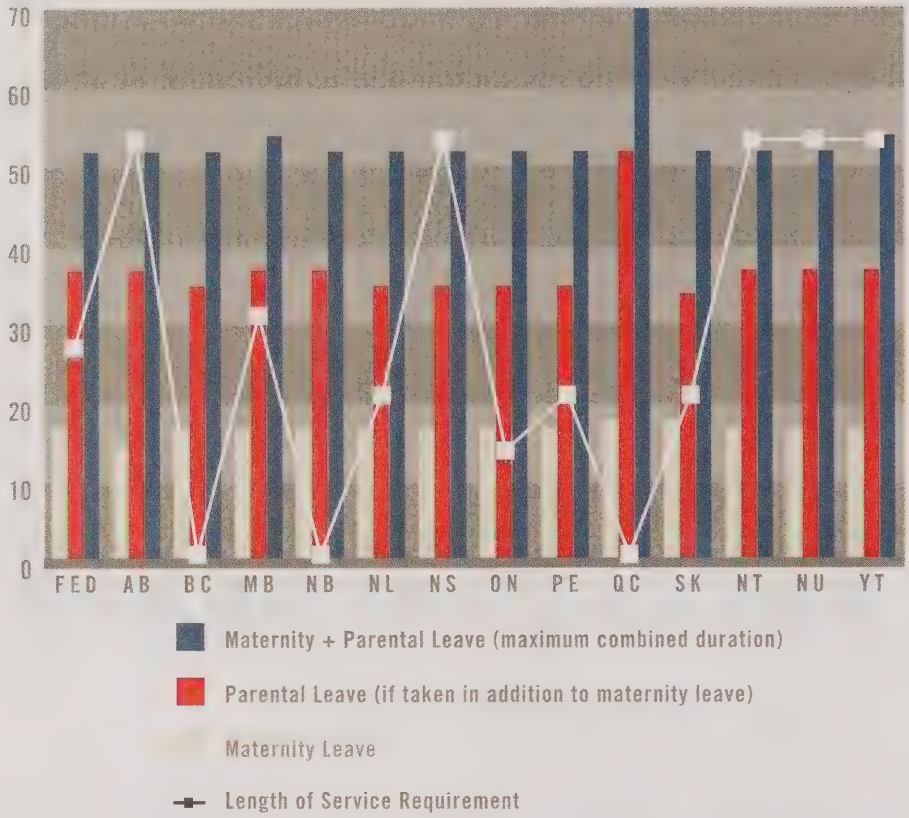


Note: Exemptions or different standards may apply to certain occupations and industries. Eligibility requirements and the calculation of holiday pay vary across jurisdictions. In some provinces, employees may refuse to work on a statutory holiday. Most jurisdictions provide for the substitution of holidays, if certain conditions are met. In Alberta, an employee is entitled to a holiday with pay only if the general holiday falls on a normal working day.

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Maternity and Parental Leave for Birth Mothers

Length of Maternity and Parental Leave for Natural Birth Mothers (General Provisions); Leave Without Pay



Note: : Exemptions may apply to certain occupations. Several jurisdictions allow maternity and/or parental leave to be extended in specified circumstances. Maternity and parental leave must normally be taken consecutively in one uninterrupted period. Notice requirements and provisions regarding seniority and benefits vary across jurisdictions. Length of service requirements in some jurisdictions are calculated in months rather than weeks (e.g., 6 months in the federal jurisdiction).

Sources: Applicable employment or labour standards legislation of each jurisdiction.

Page 45, Paragraph 1; Page 46, Paragraph 1
International comparisons of the Canadian minimum wage as a fraction of average earnings with those found in other industrialized countries, including the United States, are found in Battle (2003, pp. 250–251, 277–278). Battle concludes that Canada ranks low internationally when its minimum wage is compared with average earnings. Canada's national

average minimum wage amounted to 34% of the estimated average earnings of full-year full-time workers in 2001. Of 17 advanced industrialized nations, Canada came fourth-lowest, ahead of the United Kingdom, Spain and Japan. Canada also placed lower than the United States, whose minimum wage represents 37% of average full-time full-year earnings. A trend analysis of minimum wage rates in each Canadian jurisdiction from 1965 to 2001 (expressed in inflation-adjusted 2001 dollars) is set out in Battle (2003, p. 272). A description of the national summary is also available. Battle (2003, pp. 9–16, 273–275) provides comparisons and key findings regarding the relationship between Canadian minimum wage rates and poverty lines.

Page 45, Paragraph 5; Page 46, Paragraph 1
The report notes that within Canada there have been only a handful of labour standards measures dealing with non-standard workforce protection. Quebec and Saskatchewan have provided statutory protections for part-time workers and Yukon has included contract workers among those covered by its employment standards laws.

Under certain circumstances, Quebec prevents employers from paying their employees at a rate less than their other employees simply because they work fewer hours. For example, a part-time employee should receive at least the same pay rate as a full-time employee when they fulfill the same duties in the same location. This protection is provided in the *Act respecting Labour Standards* (R.S.Q., c. N-1.1), which establishes that:

> 41.1. No employer may remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week.
>
> [Exception:]
> The first paragraph does not apply to an employee remunerated at a rate of pay which is more than twice the rate of the minimum wage.

Saskatchewan provides enhanced protection for part-time workers in its *Labour Standards Act* (Chapter L-1, R.S.S. 1978, as amended), which stipulates at section 45.1 that "Where an employer provides a benefit to employees who work at least 30 hours per week or any other number of hours prescribed in the regulations, the employer shall provide benefits in accordance with the regulations to all eligible employees."

The Yukon *Employment Standards Act* (R.S.Y. 2002, Chapter 72) applies to contract workers who are essentially employees. Subsection 1(1) defines "contract worker" (as included under the Act's definition of "employee")

to mean "... a worker, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by a worker, who performs work or services for another person for compensation or reward on such terms and conditions that (a) the worker is in a position of economic dependence on, and under an obligation to perform duties for, that person, and (b) the relationship between the worker and that person more closely resembles the relationship of employee to employer than the relationship of an independent contractor to a principal or of one independent contractor to another independent contractor."

Page 46, Paragraph 2
Regarding on-the-job training requirements in Quebec, section 3 of *An Act to foster the development of manpower training* (R.S.Q., Chapter D-7.1) stipulates that "Every employer whose total payroll for a calendar year exceeds the amount fixed by regulation of the Government [currently $1,000,000] is required to participate for that year in the development of manpower training by allotting an amount representing at least 1% of his total payroll to eligible training expenditures." The law is intended to improve the qualifications, skills and performance of workers through continuing education.

Page 46, Paragraph 2
For an analysis and summary of forms of educational leave in a number of European countries, see European Centre for the Development of Vocational Training (CEDEFOP). *Forms of educational leave in Europe*. 2002. http://www.ictu.ie/html/news/briefcase/forms_of_educational_leave_in_eu.htm

Page 45, Paragraph 3; Page 46, Paragraph 1
Davidov (2005) notes that the term "worker" is replacing the traditional term "employee" in a growing number of acts and regulations in many European countries. Arguing that the protection afforded to "workers" should cover every work relationship that is characterized by significant dependency on the putative employer. Fredman (2005b) at pages 29 and 30 also notes such developments in Italy, Germany and the United Kingdom.

For more information on European Union labour laws, the Labour Law and Work Organisation Unit of the Directorate General for Employment and Social Affairs of the European Commission provides labour law directives and documentation regarding, among others, economically dependent workers, fixed-term work, part-time work and temporary agency workers. http://ec.europa.eu/employment_social/labour_law/index_en.htm

Page 45, Paragraph 1
The document *Family-related Leave and Industrial Relations* (2004) published by European Industrial Relations Observatory On-line (EIRO), provides information on the duration of maternity, paternity, parental and compassionate care leave in European Union member states plus Norway. http://eurofound.europa.eu/eiro/2004/03/study/tn0403101s.html

SECTION 3: PRINCIPLES FOR EVALUATING PRESENT AND FUTURE LABOUR STANDARDS

Page 51, Paragraph 5; Page 52, Paragraphs 1 and 2
The Labour Program manages Canada's participation in key international labour forums, most notably the International Labour Organization and the Inter-American Conference of Ministers of Labour. Government positions on labour issues in other international fora, such as the OECD, the WTO, the G-8, the World Bank and other UN organizations, summits and events are also developed by the Labour Program. For greater detail, see http://www.hrsdc.gc.ca/en/lp/ila/Representing_Canada/index.shtml.

Negotiating and implementing international labour cooperation agreements

Page 52, Paragraph 2
Through the negotiation, development and implementation of trade-related international labour cooperation agreements, Canada aims to address the labour dimensions of economic integration and to promote respect for fundamental labour principles and rights.

To date, Canada is a signatory to the North American Agreement on Labour Cooperation with the United States and Mexico, the Canada-Chile Agreement on Labour Cooperation and the Canada-Costa Rica Agreement on Labour Cooperation. The agreements, which are parallel to free trade agreements, seek to improve working conditions and living standards in the signatory countries, and to protect and enhance basic workers' rights. Under these agreements, participating countries commit to effectively enforce their own labour legislation, cooperate on labour matters and promote certain key labour principles. For further details, see http://www.hrsdc.gc.ca/en/lp/ila/NIILA/NIILA_index.shtml.

Page 51, Paragraph 5; Page 52, Paragraph 1
"The International Labour Organization (ILO) is the United Nations agency devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work,

encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues. The ILO is the only 'tripartite' United Nations agency in that it brings together representatives of governments, employers and workers to jointly shape policies and programmes. The ILO is the global body responsible for drawing up and overseeing international labour standards. Working with its 179 member States, the ILO seeks to ensure that labour standards are respected in practice as well as principle." For more information, see *The ILO at a Glance* located at http://www.ilo.org/public/english/download/glance.pdf

International labour standards

Since 1919, the ILO has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are essential components in the international framework for ensuring that the growth of the global economy provides benefits to all. http://www.ilo.org/public/english/standards/norm/introduction/index.htm

ILO conventions and recommendations

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) that set out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous (i.e., not linked to any convention).

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO Constitution to submit it to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals. The ILO provides technical assistance,

if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a convention they have ratified.

Core conventions

The ILO's Governing Body has identified eight "core" conventions, covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). In 1995, the ILO launched a campaign to achieve universal ratification of these eight conventions. There are currently over 1,200 ratifications of these conventions, representing 86% of the possible number of ratifications.

Priority conventions

The ILO's Governing Body has also designated another four conventions as "priority" instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labour standards system.

List of core conventions

Forced Labour Convention, 1930 (No. 29)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Equal Remuneration Convention, 1951 (No. 100)

Abolition of Forced Labour Convention, 1957 (No. 105)*

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)*

**Ratified by Canada*

List of priority conventions

Labour Inspection Convention, 1947 (No. 81)

Employment Policy Convention, 1964 (No. 122)*

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

**Ratified by Canada*

Canadian ratification of ILO conventions

Although only the federal government has the authority to ratify ILO conventions, implementation of many conventions falls under federal, provincial and territorial jurisdictions, given the division of powers under the Canadian Constitution.

The long-standing Canadian practice with respect to ILO conventions dealing with matters under federal, provincial and territorial jurisdictions has been to ratify ILO conventions only if all the jurisdictions, now 14 in number, concur with ratification and undertake to implement the conventions without reservation in their respective jurisdictions.

As many ILO conventions, including the eight core conventions, cover matters within federal, provincial and territorial jurisdictions, the ratification process can be lengthy and very challenging. http://www.hrsdc.gc.ca/en/lp/ila/Representing_Canada/Canada_ratification_ILO.shtml

Canada has ratified 28 ILO conventions. Of the eight core conventions, Canada has ratified four, namely Conventions No. 87, 105, 111 and 182. Of the four priority conventions, Canada has ratified one: Convention No. 122. Canada has also ratified 28 additional conventions, including the Hours of Work (Industry) Convention, 1919 (No. 1) and the Minimum Wage-fixing Machinery Convention (No. 26), 1928. http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Canada

The list of all the conventions adopted by the ILO, their detailed text, their ratifications by country or convention number, and the list of the ratifications of the core conventions by country is available on the ILO website: http://www.ILO.org

Chapter Four

The Reach of Labour Standards Legislation

FOUR
THE REACH OF LABOUR STANDARDS LEGISLATION

SECTION 1: WHO IS COVERED BY PART III, WHO IS NOT AND WHY THIS IS IMPORTANT

Page 58, Paragraph 4
According to the 2004 Federal Jurisdiction Workplace Survey (FJWS), non-permanent employees are far more likely to receive low pay and to lack access to benefits than are permanent employees:

- 13 percent of non-permanent employees were paid less than $10.00 per hour, versus 2 percent of permanent employees;
- 45 percent of employers offer neither pension nor insurance plans to permanent full-time employees, while 95 percent of employers offer neither of these to non-permanent employees; and
- Only 1 percent of employers with over 100 employees offer neither pension nor insurance plans to permanent full-time employees, while 73 percent of such employers offer neither to non-permanent employees.

Note that employers with 20 or more employees account for 95 percent of employment in the federal jurisdiction. It may be reasonable to infer that self-employed or contract workers are often treated similarly to non-permanent employees on the assumption that they often perform similar functions.

Page 59, Paragraph 3
Section 167 of the *Canada Labour Code* stipulates that Part III applies to "employment," "employees" and "employers" in the federal domain. Section 166 defines "employer" to mean "any person who employs one or more employees." There are no definitions of "employee" or "employment" in Part III.

Page 50, Paragraph 5
The seminal case setting out the "fourfold test" is *Montreal v. Montreal Locomotive Works Ltd.*, [1947] 1 D.L.R. 161, at page 169 (P.C.). For discussions of the evolution of employment status and the changing definition of

"employee," see Fudge, Tucker and Vosko (2002), particularly Parts III and IV, and Langille and Davidov (1999). The challenge of having a common meaning of "employee" while defining "employee" with different nuances to reflect a variety of policy purposes, depending on the objectives of particular statutes (tax, pension, employment insurance and so on), is also described in chapter 2 of England, Wood and Christie (2005).

Page 60, Paragraph 1
In 2004–2005, inspectors conducted some 740 jurisdiction investigations to determine whether workers were covered by Part III. *Source:* Labour Program LA2000 report, "Finalized Part III Assignments within Time Period 2004-04-01 to 2005-03-31," NHQ001. HRSDC (2006) Labour Program

Page 60, Paragraph 3
For a discussion of the increasing recognition in jurisprudence of administrative control and economic dependence as the appropriate determinative characteristics of employment, see Langille and Davidov (1999).

SECTION 2: WORKERS ON THE MARGINS OF PART III: INDEPENDENT CONTRACTORS AND AUTONOMOUS WORKERS

Page 61, Paragraph 2
According to the FJWS, about 22 percent of workers in the road transportation industry (29,000 out of 133,000 workers) are self-employed workers, contract workers or workers hired through an agency. This is a much higher percentage of the workforce than in other federal sectors. The road transportation industry accounts for 36 percent of self-employed and contract workers in the jurisdiction (about 29,200 out of 82,000 workers), while accounting for only 12 percent of total employment (when excluding contract workers). There are also large numbers of self-employed and contract workers in banking (about 25,200), and broadcasting and telecommunications (about 9,500), but those numbers simply reflect the size of those sectors; self-employed and contract workers are not over-represented in them.

Page 61, Paragraph 3
Professor Garland Chow provides a thorough, up-to-date description of the various forms of employment, near-employment, dependent contractor, and independent contractor, the use of agency drivers and their relationships to motor carriers and brokers and how the *Canada Labour Code* applies to each. See Chow (2006), Part II, "Industry Structure and Trends," section 7, — "Employment in the Canadian Trucking Industry," and Part IV, "Changing the *Canada Labour Code*," at section 15, "Subcontracting – Owner-Operators," and section 16, —"New Forms of Employment — Agency and Contract Drivers."

Page 62, Paragraph 2
The definitions of "employee", "employer" and "dependent contractor" for purposes of industrial relations are found in subsection 3(1) of the *Canada Labour Code*, Part I.

Page 62, Paragraph 2
The purpose of the *Status of the Artist Act*, chapter S-19.6 (S.C. 1992, c. 33), is to establish a framework to govern professional relations between artists and producers that guarantees their freedom of association, recognizes the importance of their respective contributions to the cultural life of Canada, and ensures the protection of their rights (see section 7). The Act applies to artists defined specifically to mean "an independent contractor" (section 5). These independent contractors are determined to be professionals according to the criteria set out in the Act, sections 6(2)(b) and 18(b)(i), (ii), and (iii).

Page 62, Paragraph 2
The Cultural Human Resources Council, representing self-employed television artists, directors and producers, proposed, at page 6 of its brief to the Commission, that its members be covered by Part III.

Page 62, Paragraph 4
Teamsters Canada, both in its October 2005 brief and at various meetings with the Commission, expressed the position that "some people want to be self-employed and don't want to be treated as employees." Teamsters Canada brief (2005) at page 2.

Page 63, Paragraph 1
Chow (2006) discusses the cost structures of owner-operators in the trucking industry at pages 12 through 23 of his report.

See Philipps (2006) for an analysis of the tax consequences of employee and independent contractor status.

The maximum-hours-of-service rules for highway transport are established by Transport Canada under the Commercial Vehicle Drivers Hours of Service Regulations, 1994, made pursuant to the *Motor Vehicle Transport Act, 1987*, R.S. 1985, c. 29 (3rd Supp.).

SECTION 3: WORKERS WHO ARE COVERED BY PART III BUT DO NOT BENEFIT FULLY FROM IT

3A: PART-TIME, TEMPORARY AND AGENCY WORKERS

Page 66, paragraph 1
Statistics on the composition of federal jurisdiction workforce, including the percentage of part-time, temporary and agency workers, are taken from the FJWS.

The working conditions and demographics of non-standard workers are discussed in Chapter 10 and in the technical annex accompanying it.

3B: MANAGERIAL AND PROFESSIONAL EMPLOYEES

Statutory exclusions

Page 66, Paragraph 3
Section 167(2)(a), Part III, *Canada Labour Code*, excludes employees who "are managers or superintendents or exercise management functions" from Division I, the hours of work provisions of the Code.

Section 167(2)(b), Part III, *Canada Labour Code*, excludes employees who "are members of such professions as may be designated by regulation as professions to which Division I does not apply." Under this authority, section 3 of the Canada Labour Standards Regulations excludes "members of the architectural, dental, engineering, legal or medical professions" from the application of Division I, the hours-of-work provisions of the Code.

Section 167(3), Part III, *Canada Labour Code*, excludes "employees who are managers" from the application of Division XIV, the unjust dismissal provisions of the Code.

3B(i) Hours of work

Page 67, Paragraph 2
Assumptions that managers and professionals have sufficient bargaining power to defend their own interests on hours of work, that their positions of trust require them to compromise their personal interests, that their relatively high pay compensates for long hours, and that they effectively are the only ones who can supervise their own hours, are longstanding. Saunders (2005) notes in his report to the Canadian Policy Research Networks (at pages 22 and 23) that the 1987 Ontario Task Force on Hours of Work and Overtime supported the exclusion of supervisors and managers from hours-of-work limits and provisions for overtime pay, because supervisors and managers usually have substantial bargaining power, they do not work by the "time-clock," and they often determine their own work time; hence, maximum-hours provisions and overtime premiums are difficult to implement and perhaps unnecessary.

Page 68, Paragraph 1
The example of overwork by Japanese "salarymen" is in reference to the phenomenon of "karoshi," which literally means "death by overwork." This expression was made popular by the long hours of work put in by these workers in the 1980s. For more on this, see the *Globe and Mail*

article, "Report on Japan: Salarymen: The Corporate Warrior Beats a Retreat," March 31, 2005.

http://www.theglobeandmail.com/special/reportonjapan/stories/corporatewarrior-html.

For evidence showing that "burn out" due to overwork may be harmful to the mental and physical health of employees, to their family life, to the recruitment and advancement of women in the corporate hierarchy, to the health care system, and to the long-term interests of their employers, see Duxbury and Higgins (2001), where some of the key findings (listed at pages 4 and 5) include:

- Work and life are no longer separate domains for a significant proportion of the Canadian workforce.
- The four components of work-life conflict (role overload, work interferes with family, family interferes with work, caregiver strain) have differential impacts on the physical and mental health of employees.
- High levels of role overload have become systemic within the population of employees working for Canada's largest employers. The majority of employees in our 2001 sample (58 percent) reported high levels of role overload.
- High role overload of the workforce has increased by 11 percentage points over the past decade.
- The amount of time Canadians spend in work-related activities increased between 1991 and 2001. Whereas one in 10 of the Canadians in our 1991 sample worked 50 or more hours per week, one in four do so now; during the same period, the proportion of employees working between 35 and 39 hours per week declined from 48 percent to 27 percent of the sample. This increase in time at work was observed for all job groups and sectors.
- Three times more employees reported high job stress in 2001 than in 1991. The proportion of the sample with high job satisfactions and commitment was 1.3 percent lower in 2001 than in 1991. The physical and mental health of Canadian employees has deteriorated over time as well. Organizational culture and work demands put employees at risk of overload and work-to-family interference

Furthermore, the Work and Family Unit of Saskatchewan Labour, in its brief, included the following results of a survey of working parents (Table 1).

TABLE I

Perceptions as to How They Feel,Reported by Mother-Employees and Father-Employees

	Fathers	Mothers
More to do than I can comfortably handle	46%	61%
Emotionally drained when I get home from work	50%	62%
I do not have enough time for myself	64%	82%
Physically drained when I get home from work	52%	64%
I have to rush to get everything done	52%	75%
Work makes it hard to be the parent I would like to be	48%	65%
Used up at the end of work day	39%	46%
Emotionally drained by job	32%	36%

Source: Saskatchewan Labour Work-Family Survey, 1998[1].

3B (iii) Defining "managers" and "professionals"

Page 70, paragraph 4

During the course of the hearings, unions and other groups warned of the dangers of allowing employers complete discretion to designate employees as managers, for fear that they would use this discretion colourably to deprive ordinary workers of their statutory rights. The Canadian Labour Congress, on page 18 of its submission to the Commission, noted:

> Coverage with respect to hours should extend to all professionals and to at least lower-level supervisors and managers. Some occupations are now excluded from some provisions, notably with respect to hours of work. Salaried professionals and managers are frequently obliged to work very long weekly hours, and there is no good reason why they should not qualify for either overtime pay or time off in lieu, or why very long hours should not be capped. The definition of covered employees should be inclusive of all but senior managers with the power to hire and fire and this should be widely publicized.

Neither Part I nor Part III of the *Canada Labour Code* contains a definition of "manager." However, Part I at section 3(1) does define employee to mean "any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity

[1] Submission to the Federal Labour Standard Review Commission from the Work and Family Unit, Saskatchewan Labour (Judith Martin 2005) page 4.

in matters relating to industrial relations." The term "management functions" is not defined. However, the Federal Court in 1991 held that the phrase "exercises management functions" in Part III is to be interpreted in the same way as the phrase "performs management functions," as found in section 3(1) of Part I of the Code. Therefore, jurisprudence from Canada Labour Relations Board and Canada Industrial Relations Board decisions involving subsection 3(1) has been relied on by the Labour Program when applying section 167(2)(a) in Part III. See *The Island Telephone Company Limited v. Communications and Electrical Workers and Minister of Labour*, [1991], Federal Court of Canada, Trial Division (File No. T-1401-91). See also Labour Program Interpretative Program Guideline (IPG) No. 802-1/815-1-IPG-049, "Clarification on Excluded Employees, *Canada Labour Code*, Part III," dated May 22, 1992. This IPG applies to employees excluded from the hours of work and unjust dismissal provisions.

3C: TRANSPORTATION WORKERS

Page 71, paragraph 2
The maximum-hours-of-service rules for highway transport are established by Transport Canada under the Commercial Vehicle Drivers Hours of Service Regulations, 1994, made pursuant to the *Motor Vehicle Transport Act, 1987*, R.S. 1985, c. 29 (3rd Supp.).

Page 71, paragraph 3
There is significant evidence that truckers work long hours and spend significant amounts of time away from home. Professor Garland Chow provides detailed analysis of the extent to which truckers work away from home, the hours they work, and their attitudes toward this. For example, according to the Labour Force Survey, wage-earning truckers worked an average of 47 hours per week in 2004, and 39 percent of these truckers worked more than 50 hours per week. Truckers in for-hire trucking had an even longer work week. It averaged 50 hours, and for one quarter of drivers it was 60 hours or more. In general, this finding is due to the fact that this segment includes a larger proportion of long-haul drivers. American studies show that up to 90 percent of long-haul truckers work more than 60 hours per week. Professor Chow's informal survey of mainly long-haul drivers showed that 79 percent of employee drivers, 75 percent of agency drivers, and 79 percent of owner-operators he had contacted worked more than 60 hours per week, with an average of 14.4 percent of these drivers working more than 80 hours per week. Not surprisingly, the third most commonly cited reason (26.5 percent) for drivers quitting was that they wanted shorter hours. See Chow (2006), Part II, "Industry Structure and Trends," section 9.3, "Hours of Service," and Part IV, "Changing the *Canada Labour Code*," section 12, "Work-Life Balance."

Page 72, paragraph 3
Workers and workers' organizations in the road transportation field asked the Commission to bring them back under the hours-of-work provisions under Part III. However, as noted earlier, Teamsters Canada, both in their October 2005 brief and at various meetings with the Commission, expressed the position that "some people want to be self-employed and don't want to be treated as employees." Teamsters Canada brief (2005) at page 2

Page 72, paragraph 2
The overtime thresholds for truck drivers and the definitions of "city driver" and "highway driver" are set out in the Motor Vehicle Operators Hours of Work Regulations, which are established under the authority of section 175(1)(a), Part III, *Canada Labour Code*. These regulations also reference the maximum hours limits established by Transport Canada under the Commercial Vehicle Drivers Hours of Service Regulations, 1994.

Page 72, paragraph 4
Transport Canada regulations also cover air crews and helicopter pilots, as well as railway and maritime workers. For air crews, see Part VIII of the Canadian Aviation Regulations, established pursuant to the *Aeronautics Act*, R.S. 1985, chapter A-2. The Airline Division of the Canadian Union of Public Employees expressed concerns in its brief about effective limits on hours of work and guaranteed opportunities for breaks and meals. These matters are already regulated by Division I of the Code, though the hours-averaging provisions in sections 169(2) and 170 may permit long hours without breaks in some cases. Such situations may be the subject of collective bargaining, as provided by section 170(1)(b) of the Code. Recommendation 7.58 of this report addresses the issue of meal breaks, suggesting amendments to the Code. However, it appears that the authority already exists in the Code, under section 264(g), to establish meal breaks through regulation.

For railway workers, see the *Work/Rest Rules for Railway Operating Employees*, under the *Railway Safety Act*, R.S., 1985, c. 32 (4th Supp.). For maritime workers, see the maritime labour standards set out in Part 3 of the Marine Personnel Regulations, which are made pursuant to the *Canada Shipping Act*, R.S. 1985, chapter S-9.

Some organizations specifically complained about the allegedly illogical or unfair results of the overtime rules. For example, SaskTel in its brief, at pages 2 and 3, indicated:

> Employees not interested in working overtime have the right to turn down opportunities to work additional hours with no repercussions. SaskTel had been able to work in this manner — obtaining volunteers to work overtime in situations where there was a requirement to

meet peak workload, customer demand, special projects, etc. — and had done so successfully for many years.

Since July 1st, 2000 (when SaskTel came under Part III), we have identified difficulties where employees are needed to work overtime for non-emergency purposes, where employees have clearly identified themselves as volunteering for additional hours, yet the provisions of Section 171.(1) preclude SaskTel from utilizing these individuals beyond forty-eight (48) hours in a week. Many of the job functions required for service restoration and service delivery require highly skilled individuals, at times putting limits on the number of available personnel. It is our view that employees willing to work should be given the opportunity to do so if the requirement is identified.

Ministerial permits to exceed maximum hours have been applied for and granted for peak workload and projects where it is known well in advance that excess hours will be required. Long timeframes required for approval do not render this a viable process for many situations. We have been advised by local HRSDC Labour Affairs Officers that permits will not be granted on a recurring basis to address peak workload situations such as year end financial reporting. SaskTel recommends that employers who operate with collective agreements be exempt from Part III provisions related to hours of work.

The Canadian Labour Congress in its brief, at pages 39 through 42, expressed several concerns over the alleged inadequacy and unfairness of the existing hours-of-work provisions in Part III. These include the following:

- The provisions do not take into account increasing demands to work long hours;
- There is inadequate enforcement: 50 percent of the overtime worked is unpaid;
- Overtime premiums are often cheaper than the costs of hiring, training, and providing non-wage benefits to additional workers;
- Despite long hours leading to stress and work-family conflict, employees have no right in Part III to refuse overtime;
- Part III should allow banking of overtime; and
- There should be tighter government scrutiny over averaging- and excess-hours arrangements.

3D: WORKERS ABROAD

Page 73, paragraph 3
The extraterritorial application of labour standards has been specifically dealt with under Quebec and Ontario law. In Quebec, section 2 of the *Act*

respecting labour standards (1979, c. 45, s. 2; 1990, c. 73, s. 2; 1999, c. 40, s. 196; 2002, c. 80, s. 1) provides the following:

This Act applies to the employee regardless of where he works.
It also applies:

1. to the employee who performs work both in Quebec and outside Quebec for an employer whose residence, domicile, undertaking, head office or office is in Quebec;
2. to the employee domiciled or resident in Quebec who performs work outside Quebec for an employer contemplated in paragraph 1;
3. (*Paragraph repealed.*)

The extraterritorial application of the Ontario *Employment Standards Act*, 2000, (S.O. 2000, chapter 41) is found in section 3, which provides as follows:

> 3. (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if, (a) the employee's work is to be performed in Ontario; or (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario. 2000, c. 41, s. 3 (1).

3E: UNIONIZED WORKERS

Page 74, paragraph 1
Certain provisions of Part III do not apply to unionized workers so long as their collective agreement "confers ... rights and benefits at least as favourable" as those conferred by the statute. Section 168(1.1), Part III, *Canada Labour Code*, outlines the circumstances where Part III does not apply and where collective agreements apply exclusively. The section is limited to provisions of the Code for minimum wages (Division II), annual vacations (Division IV), general holidays (Division V) and bereavement leave (Division VIII). Section 168(1.1) states, "Divisions II, IV, V and VIII do not apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement of disagreements relating to those matters is governed exclusively by the collective agreement." In addition, section 240(1)(b) provides that workers covered by a collective agreement do not have access to the unjust dismissal adjudication procedures established by the Code.

A review by Commission staff of collective agreements on file with the Labour Program revealed that more than half of collective agreements covering bargaining units of 200 or more workers provided that overtime work could be compensated through time off in lieu of overtime pay, despite the fact that the Code requires that overtime be compensated in pay.

In addition, according to the FJWS, 39 percent of companies under federal jurisdiction who compensate for overtime and who have unionized employees offer time off in lieu of pay to compensate for overtime hours.

SECTION 4: THE APPLICATION OF PART III TO SMALL AND MEDIUM ENTERPRISES

Page 74, paragraph 4
Small and medium-sized enterprises (SMEs) made the case, primarily through the Canadian Federation of Independent Business (CFIB), that they should be treated differently from other federally regulated enterprises. The CFIB, in their national submission, highlighted that government regulations and paper burden are among their members' top issues of concern. They felt that the *Canada Labour Code* provisions impose a compliance burden on all businesses, but it is especially the case for SMEs. CFIB recommended that changes to Part III support the overall federal government direction of making government regulations "smarter," or more efficient, adaptive and responsive to the fast changing economic environment. In looking at the emerging work-life conflicts in today's workplaces, CFIB's research in this area shows that there is no one-size-fits-all solution. Balancing personal and professional commitments is an individual preference that can be accommodated in many ways. CFIB believes that attempts to address work–family-balance issues through Part III of the Code would likely do more harm than good. Moreover, codifying practices may also prove to be detrimental to ongoing efforts by small-business owners to create a good working environment for their employees. The CFIB brief made several recommendations:

1. Ensure that changes to Part III of the *Canada Labour Code* facilitate rather than hinder economic growth, productivity and competitiveness in a fast changing world economy.
2. Adapt Part III of the *Canada Labour Code* to the reality of today's workplace by making it more flexible.
3. Balance employee rights with employee responsibilities.
4. Put more emphasis on raising employee and employer awareness of their rights and responsibilities.

Source: The CFIB brief to the Commission, "Fostering Canada's Entrepreneurial Economy through Smart Labour Standards" (September 14, 2005).

Page 75, paragraph 2
The findings that SMEs (employers with fewer than 100 employees) account for only 14 percent of the federal jurisdiction workforce, and that the motor transport sector accounted for 12 percent of the jobs in the federal sector, are taken from the FJWS, 2004.

Page 75, Paragraph 3
The costs of existing Part III provisions to employers are discussed in Chapter 2 of the technical annex (see Gunderson 2005). The main report recommends few amendments to Part III imposing direct costs on employers. Such recommendations include (1) a modest increase to minimum vacation entitlements; (2) an increase in severance pay for long-service employees; and (3) an increase in the minimum wage. The cost implications of these recommendations are discussed in Chapters 7, 8 and 10, respectively, of the technical annex.

Page 75, Paragraph 4
Based on data from the FJWS, 2004, some 12 percent of small enterprises (defined as firms with 1–19 employees) offer a defined benefits plan to their (permanent full-time) employees, compared with 41 percent of medium-sized enterprises and 78 percent of large-sized enterprises.

Seventy-three percent of employees working for small-sized enterprises under federal jurisdiction receive less than $20.00 per hour; and 27 percent, $20.00 or more per hour. Sixty-five percent of employees working for medium-sized enterprises receive less than $20.00 an hour, and 35 percent of these employees earn $20.00 or more per hour. Over 45 percent of employees working in large enterprises receive less than $20.00 per hour, with the remaining 55 percent receiving $20.00 or more per hour.

Page 76, Paragraph 1
The observation that 80 percent of violations stem from SMEs and that 78 percent of violations originate in the motor transport sector comes from Labour Program LA2000 report CCS55, Part III, "Violations by Division and Business Line 2004–2005."

Page 76, Paragraph 4
Numerous stakeholders indicated that many Part III violations are likely to result from ignorance, rather than deliberate disregard for the law. This led the CFIB, in its brief, to ask that the government put more emphasis on raising employee and employer awareness of their rights and responsibilities. The Canadian Trucking Alliance (CTA) indicated in its brief that a profile of companies comprising the trucking industry shows that most carriers are SMEs and do not have dedicated human resources departments. HRSDC labour affairs officers report that their employer contact was most often the owner of the business (43 percent)

or the secretary-bookkeeper (45 percent); human resources professionals were the contact in only 5.7 percent of the cases. Therefore, as most carriers are SMEs, usually without human resources professionals on staff, the labour standards rules have to be certain and relatively simple to implement. Compliance levels are affected by the fact that these businesses lack human resources professionals.

Some SMEs — those in trucking, in particular — claimed that they encounter practical barriers to complying with certain substantive provisions of Part III. Indeed, the CTA, in its brief to the Commission, asked that the language used in hours-of-work and overtime provisions be simplified. Furthermore, the CTA felt that it was well known that the *Canada Labour Code*, Part III, should be modernized and simplified generally.

Chapter Five

The Employment Contract: Clear Understandings and Fair Dealing

FIVE
THE EMPLOYMENT CONTRACT: CLEAR UNDERSTANDINGS AND FAIR DEALING

SECTION 2: CLEAR UNDERSTANDINGS

Page 81, Paragraph 3
Legislation has been passed in New Zealand, the United Kingdom and other jurisdictions, requiring the terms of employment to be clearly stated at the inception of the employment relationship. New Zealand's legislation requires that all employees have written contracts of employment where they are not covered by a collective agreement. In 1991 the Government of New Zealand introduced the *Employment Contracts Act, 1991*. The current UK *Employment Rights Act, 1996*, requires employers to provide employees with a written statement of particulars, not later than two months after the beginning of employment. Reference: *Employment Rights Act, 1996*, c. 18. This builds on earlier British legislation originally enacted in 1963. For Irish legislation on this topic, see *Minimum Notice and Terms of Employment Act, 1973*, No. 4/1973 [Ireland], updated under the *Terms of Employment (Information) Act, 1994*, No. 5/1994 [Ireland]. For another example, see South Africa, *Basic Conditions of Employment Act, 1997* (No. 75 of 1997).

The only Canadian province to enact such a requirement is Newfoundland and Labrador. The employment legislation of Newfoundland and Labrador requires the provision of written employment terms. The requirement is found under section 2 of the *Labour Standards Act*, R.S.N.L. 1990, c. L-2, as am. S.N.L. ch. 33, s. 1, 2001, but does not specify which terms are to be included. However, the province does provide a sample statement that requires the names of the parties, rate of pay or commission, hours of work and vacation pay entitlement. The document states that its purpose is to ensure that employees are aware of the fundamental terms and conditions of the employment relationship.

The *Canada Shipping Act* also mandates the provision of written particulars. The Act requires that the master of every Canadian ship (subject to certain exceptions) conclude agreements with all "seamen" requiring a certificate

engaged in Canada. The agreement is to contain specified terms, such as the duration of employment, wages and regulations respecting conduct on board. *Canada Shipping Act*, R.S.C. 1985, c. S-9, s. 163(1), 167, 168; *Crewing Regulations*, S.O.R./97-390, and the *Canada Shipping Act*, 2001, S.C., c. 26, s. 88, 91.

The Part III provisions empowering the Minister to enact regulations requiring that terms of employment be clearly stated appear to have fallen into disuse. The *Canada Labour Code*, at section 264(h), authorizes regulations to require employers to notify employees of the provisions of Part III and its regulations, the particulars of hours of work and shift changes, as well as of rest and meal periods. However, section 25 of the Canada Labour Standards Regulations only provides for posting requirements (of excess-hours permits, sexual harassment policies, and a general Part III information notice, which, as set out in schedule II to the regulations, provides the titles of the various labour standards and contact particulars for more information).

Page 83, Paragraph 1
Fines and the administration of prosecutions under Part III are discussed in Chapter 9 and the accompanying technical annex.

SECTION 3: METHODS OF REMUNERATION

Page 84, Paragraph 3
Section 20 of the Canada Labour Standards Regulations addresses the calculation and determination of the regular wage rate for workers who are paid on a basis other than hourly and on any basis other than time.

SECTION 4: DEDUCTIONS FROM PAY

Page 85, Paragraph 1
The rules governing wage deductions by employers are established by section 254.1 of the *Canada Labour Code*. The provision first prohibits employers from making deductions from wages or other amounts due to an employee and then sets out a series of exceptions. Employers, for example, may deduct amounts required by federal or provincial legislation, authorized by court order or collective agreement, or authorized in writing by the employee, as well as overpayments of wages by the employer. While the section provides regulatory authority to prescribe other amounts of permissible deductions and the manner in which deductions may be made by the employer, no such regulations have been enacted.

SECTION 5: CONTINUITY OF EMPLOYMENT

Page 86, Paragraph 2

Under section 189(1) of the *Canada Labour Code*, where a federal work, undertaking or business, or part thereof is sold, leased, merged or otherwise transferred to another federal work, undertaking or business, the employment of employees is deemed to be continuous. This is also true, under section 189(2), where a portion of the federal public service is transferred to or otherwise is converted into a federal work, undertaking or business. For example, employees who must have at least six years of continuous employment with the same employer in order to be entitled to three weeks of vacation leave and 6 percent vacation pay will not lose any service due to the sale, etc., of one employer to another: it is as if they had worked for only one employer throughout the entire period. This protection occurs throughout Part III, wherever there is a continuous employment requirement that an employee must meet in order to become eligible for a particular benefit or procedure. Examples include the requirement to have completed 12 consecutive months of continuous employment with the same employer in order to be eligible to make an unjust-dismissal complaint (sections 240(1)(a) and 246(6)), or three months of employment in order to become entitled to paid bereavement leave (sections 210(2) and (4)) or unpaid sick leave (sections 239(1) and 239(5)). Severance pay entitlements of two days' wages for each completed year of employment, with a five-day minimum entitlement, are set out in section 235(1) of the Code.

Page 86, Paragraph 4

The Ontario *Employment Standards Act* addresses the situation of employees of building services providers, creating a special protection where, for example, their previous employer has lost a service contract and has been replaced by a subsequent contractor who chooses to employ them. In the circumstances where a building services provider for a building replaces a previous provider and employs the workers of the previous provider, the workers' employment is deemed not to have been terminated or severed for purposes of the Act, and the employment with the previous provider is deemed to have been employment with the new provider for the purpose of any subsequent calculation of the employees' length or period of employment. See section 10, *Employment Standards Act, 2000*, S.O. 2000, chapter 41.

SECTION 6: RELATED EMPLOYERS

Page 87, Paragraph 2
The authority of the Minister of Labour to declare that two or more employers who are operating associated or related businesses "under common control or direction" are a "single employer" for purposes of Part III is found at section 255 of the *Canada Labour Code*.

SECTION 7: NON-PAYMENT OF WAGES

Page 88, Paragraph 3
Professor Roderick J. Wood, in the introduction to his study on wage recovery, produced for the Commission, concludes that the basic adjudication/enforcement model adopted in Canadian employment standards legislation is essentially sound. See Wood (2005).

Wood (2005) points out several deficiencies in the current wage recovery system and proposes a number of ways to encourage compliance, accelerate the enforcement process, and recover a higher percentage of outstanding wages. These include a stipulation to have employers pay administrative surcharges and the true costs of recovering wages and of appeals; the use of collection agencies, where employers would fully compensate the agencies for their actions, in addition to paying the total amount owing to employees; the ability to order employers to put up wage bonds; the authority to order the publication of names of employers who are found to owe outstanding wages; the elimination of stale claims by the imposition of a reasonable time limit during which an employee can make a wage complaint; and provision of recourse against real and personal property, such as the ability to register a security interest against property and to seize property. See Wood (2005), Part I, "The Claims Process," and Part II, "Enforcement Mechanisms."

Page 88, Paragraph 3
The 75 percent wage recovery rate and the conclusion that the remaining 25 percent of outstanding wages are difficult to collect are drawn from internal Labour Program figures for fiscal year 2005/2006, compiled in Labour Program reports entitled "Monies Analysis by Region," within time period April 1, 2005 to March 31, 2006, CCS177-Vol-Monies-R and CCS177-Enf-Monies-R. These reports are on file with the Commission.

Page 90, Paragraph 1
Section 251.13(1) of the *Canada Labour Code* authorizes a regional director to issue a payment order to a debtor of an employer who is already subject to an outstanding payment order — that is, to "a person who is or is about to become indebted to an employer to whom a payment order has already been issued ... to pay any amount owing to the employer up to the amount of the payment order directly to the Minister [of Labour]." For greater certainty, section 251.13(2) specifies that "a bank or other financial institution that has money on deposit to an employer's credit shall be deemed to be indebted to that employer."

Page 90, Paragraph 3
Under section 251.18 of the *Canada Labour Code*, directors of a corporation are jointly and severally liable for wages and other amounts to which an employee is entitled under Part III, to a maximum amount equivalent to six months' wages and to the extent that the entitlement arose during the particular director's incumbency and that recovery of the amount from the corporation is impossible or unlikely.

Page 91, Paragraph 2
The *Wage Earner Protection Program Act* (WEPP) is designed to protect workers whose employers are declared bankrupt or are subject to receivership under the *Bankruptcy and Insolvency Act* (BIA) from the loss of wages and vacation pay. WEPP payments up to $3,076 per worker are paid from the Consolidated Revenue Fund.

> The WEPP Act was contained in Bill C-55 — a Bill that provided a comprehensive reform of Canada's insolvency *laws, including the Bankruptcy and Insolvency Act* (BIA) and the Companies' Creditors Arrangement Act (CCAA). Passage of Bill C-55 was expedited with unanimous, all-party consent in both houses of Parliament, and the Bill received Royal Assent on November 25, 2005 and became chapter 47 of the Statutes of Canada, 2005 (Chapter 47).

The WEPP, at this date, is not yet in force. Technical amendments are needed to chapter 47 to ensure that the insolvency reform package meets its original policy intent, that the WEPP operates in an efficient and effective manner and to address some pressing concerns that were raised by stakeholders.

The WEPP was developed because current provisions of the BIA do not provide timely or certain payment of claims for unpaid wages owing to workers whose employers are insolvent:

- Payment of unpaid wage claims under current provisions of the BIA is uncertain because there are often insufficient assets available to pay unpaid wage claims, even in part. Under current provisions of the BIA, claims for unpaid wages are paid only after certain claims of unpaid suppliers; certain Crown claims; the claims of secured creditors; the reasonable funeral expenses of a deceased debtor; and the legal and administrative costs of the bankruptcy. Overall, only 13 cents on the dollar of unpaid wage claims are recovered, in total, and over 75 percent of unpaid wage earners receive nothing.
- Payment of unpaid wage claims under current provisions of the BIA occurs only after lengthy delays (one to three years) because payment of wage claims does not occur until the conclusion of bankruptcy proceedings.

Chapter Six

Rights and Respect

SIX
RIGHTS AND RESPECT

SECTION 1: THE VALUES

Page 94, Paragraph 1

> Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being. Accordingly, the conditions in which a person works are highly significant in shaping the whole compendium of psychological, emotional and physical elements of a person's dignity and self respect.

This statement was made by Dickson C.J., at paragraph 91 of his dissent in the case *Reference re Public Service Employee Relations Act* (Alberta) [1987] 1 S.C.R. 313.

SECTION 2: HUMAN RIGHTS AND UNJUST DISMISSAL: THE PROBLEM OF JURISDICTIONAL OVERLAP

Page 95, Paragraph 4

Three Canadian labour jurisdictions provide workers with the statutory right to challenge their dismissal from work. The federal jurisdiction provides protection to unorganized workers from unjust dismissal under Division XIV of the *Canada Labour Code*, Part III, starting at section 240. Quebec has a "recourse against dismissal not made for good and sufficient cause" set out in sections 124 to 131 of *the Act respecting Labour Standards*, 1979, c. 45, s. 124; 1990, c. 73, s. 59; 2001, c. 26, s. 142; O.C. 1314–2002; 2002, c. 80, s. 69. *Nova Scotia's Labour Standards Code*, R.S. 1989, c. 246, at section 71, prohibits dismissals or suspensions without just cause and provides a complaints-and-appeals procedure. For a thorough description and comparison of common law and statutory rights, see Part III, "Termination of Employment," and, most particularly, chapter 16, "Common Law Remedies for Wrongful Dismissal," and chapter 17, "Wrongful Dismissal by Virtue of Legislation," contained in England, Wood and Christie (2005).

Page 97, Paragraph 3
In order to avoid duplicate procedures, section 242(3.1) of the *Canada Labour Code* establishes that no unjust dismissal complaint "shall be considered by an adjudicator" where "a procedure for redress has been provided elsewhere in or under this or any other Act of Parliament." For similar reasons, under sections 41(a) and 41(b) of the *Canadian Human Rights Act* (CHRA), the Commission may decline to handle complaints where it appears to the Commission that the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available, or the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than the CHRA. For a thorough explanation of the Canadian Human Rights Commission and Canadian Human Rights Tribunal policies on referring complainants to other procedures, see http://www.chrc-ccdp.ca/publications/procedures-en.asp

For a description of the legal doctrines of issue estoppel and *res judicata* applied by administrative tribunals to prevent re-litigation of issues, see Brown and Beatty (2006) at 2: 3220 and 2: 3222.

SECTION 3: HUMAN RIGHTS AND LABOUR STANDARDS

Page 101, Paragraph 2
Part III protects the rights of workers to take, and return from, maternity leave and job-related sick leave and to have their special physical needs accommodated. The maternity leave provisions are found at section 206 of the *Canada Labour Code*, and the work-related-illness and -injury provisions are set out in section 239.1. An employee's physical needs are dealt with in Part III in several ways. Examples include the provision that an employee who is pregnant or nursing may request a modification to her job or a reassignment where continuing in her current job functions might pose a risk to her, her foetus or her child (sections 204 to 205.2). Section 239.1(5) provides that an employer may assign to a different position, with different terms and conditions of employment, any employee who, after an absence due to work-related illness or injury, is unable to perform the work performed by the employee prior to the absence. Generally speaking, employees who are incapable of working, due to illness or injury that is not work-related, are protected from dismissal or discipline for absences of up to 12 weeks (section 239).

Section 247.2 of the *Canada Labour Code* provides that every employee is entitled to employment free of sexual harassment, and section 247.3 obligates employers to make every reasonable effort to ensure that no employee is subjected to sexual harassment. Section 247.4 requires every employer, after consulting with employees or their representatives, to

issue a policy statement concerning sexual harassment. This provision describes the minimum contents of such a policy and obligates employers to make every person under their direction aware of it. These provisions are preventative. Section 247.1 of the *Canada Labour Code* defines sexual harassment to mean any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

In keeping with the current scope of federal labour standards legislation, and in contrast to sections 7 and 10 of the CHRA, the Part III provisions do not apply to hiring practices and potential candidates for employment. The CHRA, at section 14(1), states that it is a discriminatory practice in matters related to employment to harass an individual on a prohibited ground of discrimination. Section 3 includes gender as one of the prohibited grounds of discrimination. For even greater clarity, section 14(2) specifically deems sexual harassment to be harassment on a prohibited ground of discrimination. Thus, the CHRA prohibits sexual harassment in pre-employment hiring, employment and terminations and does so, in part, though prevention and enforcement activities.

Page 102, Paragraph 2
Section 182 of the *Canada Labour Code* authorizes inspectors to notify the Canadian Human Rights Commission or file a human rights complaint where they have reasonable grounds to believe an employer is maintaining differences in wages between male and female employees employed in the same establishment who are performing work of equal value, which is a discriminatory practice contrary to section 11 of the CHRA.

Page 103, Paragraph 3
The Canadian Human Rights Commission can recommend that an order-in-council be enacted assigning duties and functions of the Commission "in relation to discriminatory practices in employment" to persons administering Part III. Specifically, section 28 of the CHRA states that on the recommendation of the Commission, the governor-in-council may, by order, assign to persons or classes of persons specified in the order who are engaged in the performance of the duties and functions of the Department of Human Resources and Skills Development, such as the duties and functions of the Commission in relation to discriminatory practices in employment outside the federal public administration, as are specified in the order.

The Supreme Court of Canada has held that labour arbitrators must apply all employment-related legislation, including human rights legislation,

when interpreting collective agreements. See *Parry Sound (district) Social Services Administration Board v. OPSEU, local 324*, [2003] 2 S.C.R. 157, 2003 S.C.C. 42.

According to the Federal Jurisdiction Workplace Survey (FJWS), 2004, overall 78 percent of companies under federal jurisdiction did not have a formal policy or program on sexual harassment in the workplace. A formal policy or program was defined in the questionnaire as meaning "something that is clearly communicated on a regular basis to employees and that is consistently applied."

More specifically, smaller companies were less compliant: companies with 1–5 employees were non-complying at a rate of 93 percent; and companies with 6–19 employees, at a rate of 70 percent. Non-compliance was slightly better in medium-sized enterprises, with a rate of 55 percent. As well, 13 percent of large-sized companies (100 or more employees) did not have a sexual harassment policy in the workplace.

In addition, companies with no unionized employees were less compliant than companies with unionized employees, 81 percent, compared with 40 percent.

The only two economic sectors that stood out with a better record than the others were the rail and the banking sectors, with non-compliance rates of 24 and 11 percent, respectively.

Page 100, Paragraph 2
In 2000, the La Forest Report, *Promoting Equality: A New Vision*, recommended establishing committees in every workplace, with a broad mandate to promote human rights. While the La Forest Report, in chapter 5, expresses some reluctance to impose joint workplace committees, overall the report appears to endorse the occupational-safety and health-and-employment equity-committee models, as well as using the terminology of "internal responsibility system" and "committees" interchangeably, as the following excerpts illustrate:

> We think a joint management-labour approach is essential. (p. 29)
>
> However, the joint committee structure might not fit well with the current state of management-labour sharing of responsibility for the development of equality policy and processing discrimination complaints in some federal workplaces. It might take some time to make the joint committee structure feasible, depending on the current state of labour-management cooperation about such issues. (p. 30)
>
> At this point, we are of the view that there must be cooperation between employers and employees and their organizations. We hope that this system will move, either by collective agreement or by

legislation, towards a joint model. (p. 30)

Many of the features of a workplace health and safety committee could be adapted to a workplace human rights committee to deal with equality issues in the workplace. The committee would benefit from a combination of the practical knowledge of the workplace of labour and the knowledge of the policies and business direction of management, similar to health and safety committees. An employment equity committee, if one exists in the workplace, might also be adaptable for this purpose. (pp. 31–32)

The presence of such committees could create a focal point for human rights issues — policy, training and complaint resolution — right in the workplace. (p. 32)

The monitoring and policy functions could support a systemic approach to dealing with issues in the workplace. (p. 32)

Some employers may see this as another burden imposed by government on them. However, federal employers with over 20 employees must have joint health and safety committees (those with between 5 and 20 must have health and safety representatives) and those with over 100 employees may have joint committees for *Employment Equity Act* purposes. The functions of these committees may overlap and any proposed committee structure could take this into account. Ultimately, the cost of creating and operating the internal responsibility mechanism should be offset by the costs of the litigation it could avoid and the benefits of greater workplace harmony. (p. 32)

We asked ourselves whether we should recommend that the Act impose an internal responsibility system on employers or whether employers and employees and their representatives, if any, should make a decision about what would be most effective in each workplace. (p. 32)

Employers argued that each workplace is different and that the development of their particular approach to equality matters is unique. They said the time is not ripe for a specific model and that the lesson derived from the health and safety area is that this is a matter that should be allowed to evolve. (p. 32)

We are concerned about the effect of imposing a joint workplace human rights committee structure on employers. It is not clear that a jump from no internal responsibility scheme to the requirement for a joint committee structure is appropriate at this time. (p. 32)

> We are of the view that all employers with over five employees, following the *Canada Labour Code* requirements, should be required to establish an internal responsibility system with the features listed earlier. Also to be consistent with the approach in the Code, the system for employers with between 5 and 20 employees should reflect the capacity of the smaller workplace to set up a system. This would allow the employer and employees and their representatives to work out the details of the actual system within the workplace. This could be coordinated with the health and safety committee or the employment equity committee to ensure the best fit for the particular workplace. (p. 32)
>
> The requirement for an internal responsibility scheme should be established in the Act together with the elements of the scheme listed above. Commission guidelines could also fill out the model. (p. 32)

Recommendations 10 through 14 from chapter 5 of the La Forest Report propose the workplace internal responsibility model, which contains many of the characteristics found in workplace employer-employee committees.

The Part III provisions, which require employers to accommodate pregnant employees or those who have recently given birth, by reassigning them to work that does not threaten their health or that of their foetus or child if it is "reasonably practicable" to do so, are found at sections 204 and 205 of the *Canada Labour Code*. Similarly, according to section 239.1(3), an employer shall, "where reasonably practicable," return an employee to work after the employee's absence due to work-related illness or injury. In contrast, the CHRA imposes on the employer a duty to accommodate the employee's needs up to the point where doing so would involve "undue hardship." The concept of "undue hardship" appears in section 15(2) of the CHRA and is explained in the Canadian Human Rights Commission fact sheet "Duty to Accommodate," which may be accessed online at http://www.chrc-ccdp.ca/pdf/duty_factsheet_en.pdf.

Chow (2006) describes the concept of tier-one and tier-two carriers at pages 194 and 195. Tier-one carriers are usually small, medium and large organizations with well-developed human resources programs and policies, good operational standards, significant investment in their business, and management expertise that operates in full view of authorities (such as labour and safety officials). These organizations have an interest in being in compliance with the appropriate regulatory standards and tend to have been operating for a long period of time. In contrast, tier-two carriers are often very small, operate "under the radar," and are described as "fly by night." Tier-two carriers are new to the industry, may not last long, and

have little knowledge of, or interest in, meeting regulatory obligations. In other words, they are most likely to not observe a variety of regulations (occupational safety and health, labour standards, transport regulations, workers' compensation requirements, and so on). This creates unfair competition with tier-one carriers, as Chow notes on pages 191 and 192. Chow recommends at pages 198 and 199 more effective enforcement through the coordination of enforcement activities across several agencies at the federal and provincial levels, as well as the creation of a national registry that prevents carriers from avoiding regulatory enforcement by setting up business in different provinces.

Saunders and Dutil (2005) have noted that one effective method of identifying offenders is to adopt an interdepartmental approach: "whether it's for employment standards or occupational safety and health or other provincial legislation, or even municipal building permit inspection; if there is any serious evidence of non-compliance on a regulatory standard, that information ought to be shared with other bodies charged with the enforcement of regulatory standards." The report recommends the adoption of interdepartmental information sharing, as well as coordinated multi-inspectorate inspections.

Page 103, Paragraph 2
The Employment Standards Administration (ESA) of the United States Department of Labor (USDOL) has a memorandum of understanding (MOU) with the Immigration and Naturalization Service (INS) of the United States Department of Justice. This MOU is designed to foster cooperation and coordination between the two bodies to enhance worksite enforcement of employer sanctions and labour standards in order to reduce the employment of unauthorized workers in the United States. The MOU clarifies the enforcement roles and responsibilities of each agency to ensure more efficient uses of resources, reduce duplication of effort, and improve interagency communication and coordination.

In 1998, both the Mexican and Canadian National Administrative Offices (NAOs) of the Commission for Labor Cooperation, an international organization created under the North American Agreement on Labour Cooperation, received a public communication alleging that the MOU in question deterred immigrant workers from reporting violations of U.S. minimum employment standards laws. The MOU required USDOL inspectors investigating wages and hours complaints to inspect employer records concerning the immigration status of employees and to communicate any information regarding unauthorized workers to the INS. The communication further alleged that, in the absence of worker complaints, USDOL officials lacked the information necessary to enforce federal wage and hours laws and that other means of enforcement were much less effective. The com-

munication was submitted by the Yale Law School Workers' Rights Project, the American Civil Liberties Union Foundation Immigrants' Rights Project, and a number of other civil rights organizations and trade unions. On November 25, 1998, the U.S. NAO sent a copy to the Mexican and Canadian NAOs of a new MOU, dated November 23, 1998, modifying and superseding the earlier one. The key provision, which reflected a clarification in the USDOL policy that its duty to protect vulnerable workers took priority over all other considerations, thus causing it to cease reporting illegal immigrants, reads as follows:

> Investigators of ESA's Wage and Hour Division (WH) and Office of Federal Contract Compliance Programs (OFCCP) shall conduct thorough inspections of employers' compliance with their employment eligibility verification obligations ... in conjunction with their ESA's labor standards enforcement, except in any investigation based on a complaint alleging labor standards violations. (This limitation to conduct of conducting employment eligibility verification inspections only in "directed" — i.e., non-complaint cases — is intended and will be implemented so as to avoid discouraging complaints from unauthorized workers who may be victims of labor standards violations by their employer.) This employment eligibility verification compliance inspection by ESA investigators shall not involve making any inquiry regarding the immigration status of workers, nor shall the conduct of an employment eligibility verification inspection be the basis for ESA on-site investigation.

Sources: The MOU may be found at the USDOL website (http://www.dol.gov/esa/whatsnew/whd/mou/nov98mou.htm). A description of the public communication sent to the Canadian and Mexican NAOs may be found in the 1998 NAALC annual report, Part III, "Cooperative Consultations and Evaluations," A. "Public Communications," (i) "Communications submitted in 1998," Canadian NAO 98-2 and Mexican NAO 9804 (website: http://www.naalc.org/english/report4_4.shtml).

SECTION 4: INTERFERENCE WITH DIGNITY: HARASSMENT, BULLYING AND ABUSE IN THE WORKPLACE

Page 104, Paragraph 2
Quebec's psychological harassment provisions are found in sections 81.18 to 81.20 and 123.6 to 123.16 of the *Act respecting Labour Standards*, R.S.Q. c. N-1.1. Information on Quebec's labour standards legislation, including updates on activities related to psychological harassment, may be found on the Web at http://www.cnt.gouv.qc.ca/en/lois/normes/normes/harcelement.asp.

The following sources establish the health impacts of bullying:

- European Foundation for the Improvement of Living and Working Conditions (2003), *Preventing Violence and Harassment in the Workplace*, Dublin, March, chapter 6;
- European Foundation for the Improvement of Living and Working Conditions (2000), *Third European Survey on Working Conditions 2000*, Pascal Paoli and Damien Merlié, Dublin;
- Hoel, Sparks and Cooper (2001), *The Cost of Violence/Stress at Work and the Benefits of a Violence/Stress-Free Working Environment*, Report Commissioned by the International Labour Organization, http://www.pco-bcp.gc.ca/smartreg-regint/en/08/index.html

According to Professor Colleen Sheppard, as of June 2005, one year following the coming into force of Quebec's psychological harassment law, the Labour Standards Commission reported it had received 2,500 complaints, and that fewer than 1 percent of these complaints were considered frivolous. Professor Sheppard provides a thorough description of psychological harassment legislation in Quebec, Europe and elsewhere in her paper to the Commission. See Sheppard (2005), "Rights, Respect and Dignity: Interface of Labour Standards and Human Rights Legislation," at Part 4, "Psychological Harassment: A New Labour Standard and a New Human Right."

According to the FJWS, 2004, 15 percent of companies under federal jurisdiction had a formal policy or program concerning psychological harassment (intimidation or bullying) in the workplace, mainly in the road transport and telecommunications and broadcasting sectors.

Chapter Seven

Control Over Time

SEVEN
CONTROL OVER TIME

SECTION 1: INTRODUCTION

Introduction of working time legislation in the 19th century

Page 108, Paragraph 1
For an overview of early developments in labour standards and labour policy, see Roberts (1969), Taylor (1972), and Henriques (1979).

SECTION 2: MODERN TIMES: WHY THE WORK–LIFE BALANCE IS IMPORTANT FOR CANADIAN WORKERS, EMPLOYERS AND THE REST OF US

Female Participation Rate and Dual-earner Couples

Page 109, Bullet 1
Since the mid-1970s there has been a large increase in the employment rate of adult (age 25 or more years) couples. Whereas the *overall employment rate* of married adult men fell from 81 percent to 72 percent between 1976 and 2005, the employment rate of married adult women increased significantly from 38 percent to 61 percent. Moreover, during the 1976–2005 period, the *full-time employment rate* slipped from 79 percent to 68 percent among men but rose from 28 percent to 47 percent for women [*Labour Force Historical Review 2005*, CD 2, table 1, Statistics Canada (2006a)].

In 1994, more than two-thirds of dual-earner couples worked a combined 60 to 89 hours per week, and a fifth of all couples worked in excess of 90 combined hours per week (Charette 1995, 9).

Lone-Parent Families with Work and Care Obligations

Page 109, Bullet 2

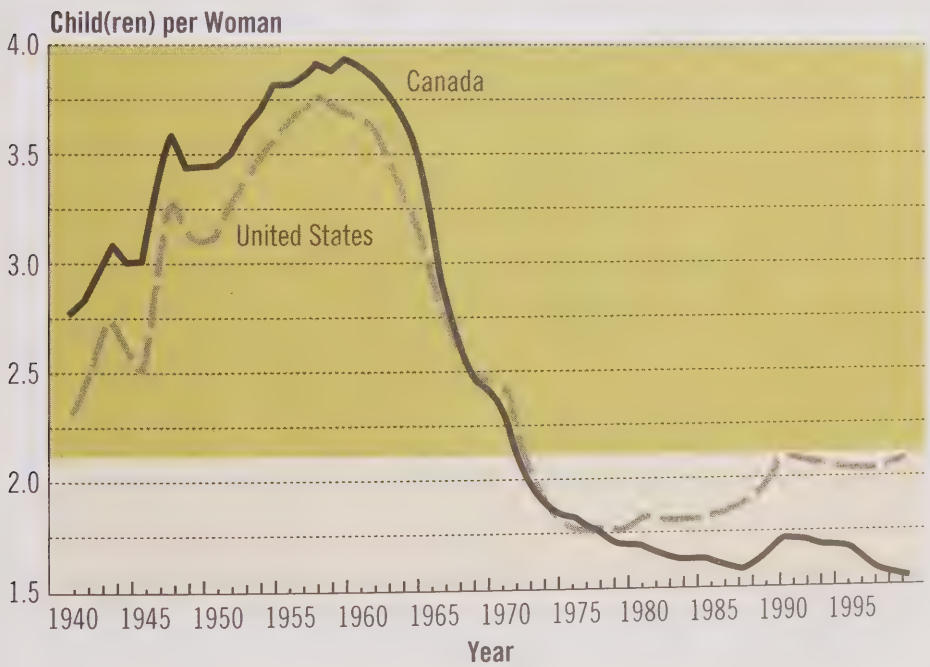
Since 1976 the employment rate of women with young children has steadily increased. Whereas in 1976 the employment rate of single women with at least one child less than six years of age stood at 38 percent, by 2005 it had risen to 56 percent [*Labour Force Historical Review 2005*, CD 2, table 4, Statistics Canada (2006a)].

Life Expectancy and Population Aging

Page 109, Bullet 3

Figure 1 illustrates the overall decline in Canadian and American fertility rates between 1940 and 1999. In 1957, at the height of the baby boom, Canadian fertility rates peaked at 3.91 but have since fallen dramatically (Bélanger and Ouellet 2001, 109). In 2003, the Canadian fertility rate stood at 1.53 children per woman, just shy of the 1.56 Organization for Economic Co-operation and Development (OECD) average (Statistics Canada 2006b, 5).

Figure 1
Total Fertility Rate Canada and United States 1940-1999



Reproduced from: Bélanger, Alain, and Geneviève Ouellet, 2001 "A Comparative Study of Recent Trends in Canadian and American Fertility, 1980–1999," in Statistics Canada, Report on the Demographic Situation in Canada.

Partial explanations for this decline include:

- the tendency to delay starting families, resulting in a smaller number of children per couple;
- the increased use of contraception; and
- the increased difficulties among young adults to make a smooth entry into the Canadian labour market (Bélanger and Ouellet 2001).

Life expectancy of Canadians has been steadily rising. In 1950, average life expectancy at birth was 66.3 years for men and 70.8 years for women. By 2003 it stood at 77.4 years for men and 82.4 years for women (Statistics Canada 2005, 48).

A growing number of Canadians now have simultaneous child- and eldercare responsibilities. A recent Statistics Canada study found that 2.5 million Canadians between the ages of 45 and 64 years had children less than 25 years of age living in the household in 2002. Among this group, 27 percent (or 700,000) also cared for an aging relative, and the vast majority (600,000) were employed. This group is often dubbed the "sandwich generation."

Although relatively small, the sandwich generation will continue to grow:

- Baby boomers are aging;
- Canadian fertility rates remain low; and
- Families are being started later in the life cycle (Williams 2004).

Aging Workforce

Page 109, Bullet 4
Canadian society and its workforce are aging. In 2005, 38 percent of Canadian workers were 45 years of age or older, a sizable increase over the 29 percent who were more than 45 years of age in 1976 (*Labour Force Historical Review 2005*, CD 1, table 1). In 2005, one in four workers was over 50 years old, an increase from one in five over this age in 1976. Furthermore, 20 percent of all employed Canadians were within 10 years of the median age of retirement in 2002, nearly double the 11 percent rate observed in 1987 (Pyper 2006).

Recent data indicates that some older workers could benefit from special workplace accommodations. In a survey of recent retirees about their decision to retire, one-third (31 percent) said that better workplace accommodations could have influenced their decision to continue working. Such accommodations included the possibility of reducing their

work schedule, working fewer or shorter days, or being provided with additional vacation leave without affecting pension entitlements (Morissette *et al.* 2004).

Weekly Hours of Work

Page 110, Bullet 1
Since 1976 the average number of weekly hours worked has remained relatively stable with mean actual weekly hours falling only slightly from 37.7 hours to 36.5 hours (*Labour Force Historical Review 2005*, CD 1, table 10).

The general stability of average hours, however, masks a trend in polarization of working time. In fact, a smaller share of workers are working a standard work week (35–40 hours), while a growing share are working either shorter (less than 35) or longer (more than 40) hours.

Labour Force Survey (LFS) data indicates that the share of employed Canadians working standard hours slipped from 44 percent (1976) to 36 percent (2005), while the portion working shorter hours (less than 35) increased from 35 percent to 40 percent, and the share working in excess of 40 weekly hours rose slightly from 21 percent to 24 percent. The portion working very long hours (more than 50 hours per week) remained relatively stable, hovering between 11 and 12 percent over the period (Labour Force Historical Review 2005, CD 1, table 10).

Non-standard Employment

Page 110, Bullet 2
Prior to 1990, there was little information about shift work in Canada. What evidence does exist indicates a gradual increase in shift work during the 1970s and 1980s (Shields 2002, 28). Though subject to comparability limitations, data from 1967 indicates that one-fifth (19 percent) of paid workers reported generally working "nights" (Sunter 1993). More recent data indicates that three in 10 workers reported working some form of shift in 2000–2001. For most of these workers, performing shift work was a requirement of their job (Shields 2002, 28).

According to the 2001 Workplace Employee Survey (WES), one in four workers (24 percent) work outside the hours of 6 a.m. to 6 p.m., and more than one in five (22 percent) say that their job usually includes working Saturdays or Sundays (Statistics Canada 2001a, custom tabulation).

The incidence of part-time employment (less than 30 hours per week) has increased significantly from 12 percent of all employed in 1976 to 18 percent by 2005. Over the past 30 years, part-time jobs have risen at a much faster pace than full-time jobs, with full-time jobs increasing 55 percent while part-time work rose 143 percent (1976–2005) (*Labour Force Historical Review 2005*, CD 1, table 1).

Recent evidence regarding temporary employment suggests it is also on the increase. According to Statistics Canada's 1989 General Social Survey (GSS), the share of employed Canadians in a temporary job stood at 7 percent (Vosko et al. 2003, 18), while 2005 LFS data indicates that 13 percent of all employees were in a temporary job, representing 1.8 million Canadian workers (Labour Force Historical Review 2005, CD 1, table 43).

There is evidence to suggest that many "temporary" jobs are not one-off spells of employment but rather part of a chain of connecting jobs. Data from the 2000 Changing Employment Relationships Survey (CERS) found that 61 percent of workers who identified themselves as "temporary" employees also reported they had had at least one previous term of employment with their employer at some point in the three years prior to the survey, and 39 percent reported they had had at least two previous terms of such employment (Lowe and Schellenberg 2001, 12).

Data from the 2000 CERS also indicates that most temporary workers would prefer permanent employment. When asked, 76 percent of the temporary workers stated that they would prefer to have a permanent job. Similarly, the 1989 GSS found that 65 percent of temporary workers would have preferred permanent employment (cited in Lowe and Schellenberg 2001, 13).

Work–Life Balance

Page 110, Paragraph 1
The most widely cited Canadian studies of work–life balance are those of Professors Linda Duxbury and Chris Higgins. Their research is based on two extensive surveys (1991 and 2001) of workers for large private and public sector employers. While their sample was not representative of the Canadian workforce as a whole, the large sample size (more than 30,000 workers) provides a good picture of work–life balance issues among the groups of workers surveyed, namely professionals, managers, clerical and administrative workers, and technical workers employed in large workplaces. Overall, Duxbury and Higgins observe that work–life conflict was a bigger problem for these workers in 2001 than 10 years earlier (Duxbury and Higgins 2003).

Statistics Canada's GSS has also collected survey data on work–life balance, and it has documented a gradual increase in work–life conflict over time. Whereas 16.7 percent of full-time workers were somewhat or very dissatisfied with their level of work–life balance in 1990, by 2001 this was the case among 20.0 percent of full-time workers (cited in Lowe 2005, 40).

The GSS also explored reasons for employee dissatisfaction. Among those reporting dissatisfaction, 46 percent cited lack of time for family, spouses, partners or children as a primary cause (cited in Lowe 2005, 40).

Moreover, according to the EKOS 2004 Rethinking Work Survey, almost two-thirds (63 percent) of respondents placed a high importance on being able to achieve work–life balance, though only one-third (34 percent) reported they had actually achieved "good" balance in their job (Lowe 2005, 42).

There is also evidence to indicate that long hours of work have a negative effect on employee health.

Data collected from the 2000 GSS documented that 34 percent of workers reported "too many demands or too many hours" as their most common source of workplace stress (Williams 2003).

Additional data from the National Population Health Survey (NPHS) indicates that moving from a 35- to 40-hour work week to longer hours exceeding 41 hours per week increased the risk of negative health behaviours such as increased smoking, increased odds of weight gain among men, and increased alcohol consumption among women. Women who shifted to long hours were also observed to be at greater risk of depression, when compared with women who continued to work standard hours (Shields 2000, 55).

Duxbury and Higgins (2004) also draw a link between work–life conflict, poor health, and health-care costs. The authors found that those with high levels of conflict were:

- more likely to have visited a physician or mental-health expert in the six months prior to the survey;
- more likely to have used hospital services;
- more likely to have spent additional money on prescription medications; and
- more likely to report their health as merely "fair" or "poor," and less likely to characterize their health as "very good" or "excellent."

Work–life balance affects employees' job commitment, job satisfaction, job stress and absenteeism. According to Duxbury and Higgins (2003), those with high levels of work–life conflict were:

- less likely to report a high level of commitment to their job;
- less likely to report a high degree of job satisfaction;
- more likely to report a high level of job stress;
- more likely to report a desire to find a different job; and
- more likely to report having missed three or more days work in the previous six months.

In a separate study, Duxbury and Higgins (2005) note that workplace culture — that is, whether employees perceive their employer as supportive of work–life balance — was a better predictor of work–life conflict than tangible conditions of work. They cite the "culture of hours" and a "culture of work or family" (emphasis in the original) as particularly problematic.

While the majority of Canadian workers (72 percent) reported being satisfied with their hours of work (Statistics Canada 2001a), a large share wanted either more hours of work for additional pay (21 percent, which would amount to 2.5 million workers) or fewer hours for less pay (7 percent, or 800,000 workers).

Work–Life Balance: Employer Response

Page 110, Paragraph 3
Data collected from the FJWS indicates that roughly 5 percent of federal jurisdiction employees work compressed work weeks, and 2 percent telework, figures that are very similar to overall Canadian labour market trends (Workplace and Employee Survey Compendium 2004, 29; Bisaillon and Wang 2006, 13). Roughly 15 percent of federal jurisdiction employers provide annual paid family-related or personal leave. Among large employers, with 100 or more employees, 30 percent of federal jurisdiction employers reported offering such leave. Roughly 7 percent of companies reported offering supplementary paid maternity, parental or adoption leave to their workers.

With respect to the provision of paid vacation time, a minority of employers do not provide the minimum amounts outlined in the *Canada Labour Code*. FJWS data indicates that 12 percent of employers did not report offering the minimum three weeks' paid holiday that employees are entitled to after six years of service (Bisaillon and Wang 2006, 20).

According to a 1999 Conference Board of Canada survey, a growing share of Canadian businesses is offering employees flexible work arrangements. The Board observed that in 1999:

- 88 percent of surveyed employers offered flextime, compared with only 49 percent in 1989;
- 63 percent offered family responsibility leave, compared with 55 percent in 1989;
- 52 percent offered job sharing, up from 19 percent in 1989;
- 50 percent offered telework, compared with 11 percent in 1989; and
- 48 percent offered compressed work schedules, compared with 28 percent in 1989 (cited in Johnson, Lero, and Rooney 2001).

However, employee data from surveys such as the WES tends to indicate that not all workers have access to the benefits that may be offered by their employer. This suggests that methodological limitations of employer-provided data may have the effect of employers overstating the actual access employees enjoy to such work arrangements.

Evidence from the WES seems to suggest that work arrangements are, at least in part, a function of one's occupation and (or) industry of employment. For instance, 46 percent of managers and 43 percent of professionals reported working flexible hours, compared with fewer than 30 percent of clerical-administrative and production workers (Statistics Canada 2001b, 28).

In their review of family-friendly arrangements, Comfort, Johnson, and Wallace (2003) conclude, "access to flexible work arrangements is a function of the type of work performed, not a response to employee need. In terms of occupation, access to family supportive practices was generally highest among well-educated employees in managerial/professional jobs." They further note, "employees' personal and family characteristics *showed virtually no relationship* to participation in flexible arrangements" (Comfort, Johnson, and Wallace 2003, 47, emphasis added).

Duxbury and Higgins (2005) explore "workplace culture" and identify it as the key predictor of work–family conflict. Workplace culture — the norms and expectations within the workplace — was a stronger predictor of work–family conflict than tangible conditions of work. They add that the "culture of hours" and "culture of work or family" (emphasis in original) as particularly problematic for workers (Duxbury and Higgins 2005, xii).

According to the Centre for Families, Work, and Well-Being (Johnson, Lero, and Rooney 2001, 64), flexible work options appear to generally be offered on informal bases. They cite recent survey evidence that indicates that of the 70 percent of the employers who reported offering flextime,

80 percent reported they had no written flextime policy. Similarly, of the 70 percent who claimed to provide unpaid time off for eldercare, roughly 80 percent reported they had no written eldercare policy in place.

Time Off in Lieu of Overtime Pay

Page 113, Paragraph 2
Some provinces and territories, including Alberta, British Columbia, Manitoba, Quebec and Yukon, explicitly allow for compensatory time off in lieu of overtime pay in their labour standards legislation. Though other codes do not specifically allow for such a practice, nowhere is it forbidden to compensate overtime with time off work. In recent years, the option of receiving time off in lieu of overtime pay has become increasingly common in Canadian collective agreements. In 1998, just over 40 percent of major collective agreements contained clauses allowing time off in lieu of overtime pay, an increase from 34 percent reported in 1988 (Rochon 2000, 11).

Work–Life Conflict and Employee Health

Page 113, Paragraph 4
Duxbury and Higgins (2004) draw a link between work–life conflict and poor employee health. They argue that greater employer attention to work–life conflict may have the effect of improving the health of Canadian employees. Specifically, they reported that workers with high levels of work–life conflict were:

- more likely to have visited a physician or mental health expert in the six months prior to the survey;
- more likely to have used hospital services;
- more likely to have spent additional money on prescription medications; and
- more likely to have reported their health as merely "fair" or "poor," and less likely to say their health was "very good" or "excellent" (Duxbury and Higgins 2004).

Working Time and Fertility or Childhood Development

Page 114, Paragraph 1
Recent OECD data indicates that countries with highly developed family-friendly policies appear to have been most successful in counteracting decreased fertility rates. In 1998, the highest fertility levels were observed in countries where institutional supports for gender equality and women's

opportunities were greatest, where traditional family values were weakest, and where employment structures were most accommodating toward women (Castles 2004, 143).

This OECD data appears to be consistent with some Canadian findings. Duxbury and Higgins (2001) reported that 45 percent of respondents who experienced a high level of work–family interference reported they had fewer children because of work obligations. By comparison, only 18 percent of respondents experiencing a low level of work–family conflict reported having fewer children because of work. Similarly, 36 percent of respondents with high work–family interference reported not having started a family because of work responsibilities, compared with only 25 percent among respondents reporting a low level of interference (Duxbury and Higgins 2001, 44).

SECTION 3: ASSUMPTIONS THAT HAVE SHAPED MY RECOMMENDATIONS CONCERNING CONTROL OVER TIME

Working Time and Gender Equality

Page 114, Paragraph 1
Women continue to perform roughly two-thirds of all unpaid household work, such as caring for children and performing domestic tasks. Even if employed full-time, women are often responsible for the majority of unpaid caring responsibilities (Fredman 2005a, 63). Women are also more likely than men to reduce paid hours of work to meet domestic responsibilities, largely as a result of continued gendered division of household labour and generally lower market earnings of women (Fredman 2005a, 63).

Lowe (2005) also notes that worker behaviour can, in large part, be explained by differences in policy support for work–family balance. He notes, "Public child care in France, compared to Germany, is linked to higher labour force participation of mothers in France. In comparing Norway and Sweden, fewer mothers in Norway are in the labour force in large part due to more limited maternity and parental leave policies. Since the 1970s, Sweden has developed a generous combination of policies to support parents, including the right to return to one's job, public childcare and eldercare" (Lowe 2005, 53).

SECTION 4: FOUR MODELS OF REGULATED FLEXIBILITY

Canadian Trucking Alliance Proposal

Page 126, Paragraph 2
In its submission to the Federal Labour Standards Review Commission, the Canadian Trucking Alliance (CTA) proposed a sectoral approach to dealing with the road transport sector.

They suggested the creation of separate set of regulations that take into account the unique nature of the trucking sector. Under its proposal, drivers would be subject to workable rules flowing from payment of wages, vacation pay, or general holiday pay in a manner most appropriate to their specific method of compensation. The CTA asserted that these regulations would emphasize greater contractual freedom between employee drivers and companies (Canadian Trucking Alliance 2005).

Workplace Consultation Practices

Page 129, Paragraph 3
In his literature review on workplace productivity, Gunderson (2002) noted that employee involvement programs appear to have the most positive effect on job satisfaction, and generally lower workplace absenteeism rates. Overall, increasing employee workplace involvement improves firm-level performance and productivity, though to be most effective, this approach needs to be combined with *clusters* of other human resources management practices (Gunderson 2002, 12–13).

SECTION 5: CONTROL OVER TIME: A BALANCED SYSTEM OF SUBSTANTIVE RULES

Right to Refuse Overtime Work

Page 145, Paragraph 3
Legislative provisions granting employees a conditional right to refuse overtime exist in Manitoba, Quebec, Saskatchewan and Yukon.

In Manitoba's *Employment Standards Code*, management rights do not include an implied right to require employees to work overtime, except in specified emergency situations (ss. 16 and 19–20).

In Quebec's *Act respecting Labour Standards*, employees can refuse overtime hours if these hours would add four extra hours to their day, or result in working more than 14 hours in a 24-hour period or more than 50

hours in a week. The right to refuse does not apply if refusal would present a danger to the life, health, or safety of employees or the general public, or if there is risk of damage to property (s. 59.0.1). Employers cannot discipline an employee for refusing extra hours if the overtime would conflict with an uncontrollable parental or family responsibility (s. 122(6)).

Under Saskatchewan's *Labour Standards Act*, employers cannot generally require employees to work more than 44 hours in a week without employee consent (s. 12).

In Yukon, the *Employment Standards Act* provides that an employee may refuse overtime, though the refusal and reasons for it must be given in writing (s. 8(5)).

Work Flexibility

Page 136, Paragraph 3
In its submission, the Canadian Labour Congress highlighted the importance of addressing work–family conflict. They submitted "issues relating to work–family conflict — above all promoting more flexibility for workers in terms of working time over the working week and the life course — should be a major priority in the review of Part III ... more time flexibility to meet the needs of workers is needed, not just to meet the needs of working women, but also to provide a basis for a more equitable sharing of caring responsibilities between men and women" (Canadian Labour Congress 2005, 20).

Federally Regulated Employers – Transportation and Communications (FETCO) advanced a similar position, stating "any manager knows the need for flexibility in balancing subordinates' work and family obligations. Often this could mean allowing employees a couple of hours off for family reasons on the understanding that the time will be made up later. This could conflict with Part III but only because the law is not now flexible enough to deal with such matters" (FETCO 2005).

Time Off in Lieu of Overtime Pay

Page 147, Paragraph 1
Under employment standards legislation in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Quebec and Yukon, employees may agree with their employer to be compensated with time off in lieu of being paid for overtime (*Employment Standards Code* of Alberta, ss. 22(2) and 23; *Employment Standards Act* of British Columbia, s. 42; *Employment Standards Code* of Manitoba, s. 18; *Labour Standards Act* of Newfoundland and Labrador, ss. 25(2)–(3); *Employment Standards*

Act, 2000, of Ontario, s. 22(7); *Act respecting Labour Standards* of Quebec, s. 55; and *Employment Standards Act* of Yukon, s. 9).

In Alberta and Yukon, such arrangements may be made by collective or written agreement between employer and employee(s). In British Columbia, an employer may establish a "time bank" if requested by the employee. In Manitoba, Newfoundland and Labrador, Quebec and Ontario, employees and employers can agree to substitute time off for overtime pay.

Such practices appear to be increasingly common in collective agreements. Whereas only one-third (34 percent) of major collective agreements (falling under both provincial and federal jurisdictions) contained provisions allowing overtime to be credited toward time off in 1988, this was the case in 41 percent of collective agreements in 1998 (Rochon 2000, 10–11).

Right to Request Flexible Work Arrangements in the United Kingdom

Page 149, Paragraph 3
There is some preliminary evidence to suggest that requiring employers to officially consider employee requests for work flexibility is influencing large British employers to be increasingly receptive to employee needs.

Though limited to only four case studies, Croucher and Kelliher (2005) observed that the introduction of provisions to the British 2002 *Employment Act*, which establishes the right of working parents to request flexible working arrangements, generally resulted in employers re-examining their human resources management policies. The employers studied appeared to have gone beyond the minimum terms outlined in the legislation in an effort to portray themselves as "employers of choice" (Croucher and Kelliher 2005, 503). The authors note that "in spite of the seemingly weak legislative provisions, working parents to a large extent have been able to gain the work flexibility that they seek" and that "the legislation's actual effect was greater than its critics envisaged" (Croucher and Kelliher 2005, 517, 518). Moreover, the authors found that employers extended the right to request flexible work arrangements to all employees, not just parents, as targeted in the legislation (Croucher and Kelliher 2005, 518).

According to the Rt. Hon. Patricia Hewitt, Secretary of State for Trade and Industry, of the nearly one million parental requests made in the first year of the law, roughly 80 percent were [granted?] [Please complete the sentence.] (cited in Croucher and Kelliher 2005, 504). While a somewhat less optimistic conclusion was reached by Maternity Alliance, it nonetheless acknowledged that in more than two-thirds (68 percent) of cases, employee requests had been agreed to or a compromise between the worker and employer been had reached (cited in Croucher and Kelliher 2005, 504).

Shift Work and Health

Page 151, Paragraph 1
As previously noted, roughly 30 percent of employed Canadians perform shift work. Statistics Canada data indicates that shift work can have a negative effect on employee health.

Data from the 1994–1995 NPHS documented that shift workers tend to report higher levels of high work stress and a higher incidence of sleeping disorders, when compared with workers performing regular daytime schedules (Shields 2002).

Married men employed on evening shifts were more likely than men working a regular daytime schedule to report relationship problems or difficulties finding a partner with whom they were compatible. They were also more likely to report a low sense of "mastery." In addition, 45 percent of men working evening shifts were daily smokers, compared with 27 percent of daytime workers (Shields 2002).

Among women, irregular shifts were related to elevated levels of personal stress, and rotating shifts were associated with a lower sense of "mastery" (Shields 2002).

Male workers who reported working a non-standard schedule in 1994–1995 experienced an increased likelihood of being diagnosed with at least one new chronic health ailment by 1998–1999. This was not observed among women, however, possibly as a result in part of the "voluntary" nature of shift work, reported earlier (Shields 2002, 24).

Non-Standard Employment under Federal Jurisdiction

Page 151, Paragraph 2
According to the 2004 FJWS, 33 percent of permanent full-time employees and 31 percent of permanent part-time employees worked rotating or irregular shifts in 2004 (FJWS 2004, tables19a and 20a).

Employer Notice of Shift Change

Page 151, Paragraph 3
Saskatchewan's *Labour Standards Act* requires an employer give at least one week's notice if there is a change in an employee's work schedule. Employers are also required to notify their employees of when work begins and ends over a one-week period (s. 13.1).

Under the *Employment Standards Code* of Alberta, an employer cannot require an employee to change from one shift to another without providing the employee with at least 24 hours' written notice and at least eight hours of rest between shifts (s. 17(2)).

Jurisdictions Allowing Family Responsibility Leave

Page 154, Paragraph 1
Eight jurisdictions have legislative provisions regarding short-term family responsibility leave:

- British Columbia (*Employment Standards Act*, s. 52);
- New Brunswick (*Employment Standards Act*, s. 44.022);
- Newfoundland and Labrador (*Labour Standards Act*, s. 43.11);
- Nova Scotia (*Labour Standards Code*, s. 60(G));
- Ontario (*Employment Standards Act, 2000*, ss. 50-53);
- Prince Edward Island (*Employment Standards Act*, s. 22.1);
- Quebec (*Act respecting Labour Standards*, ss. 79.7 and 122(6)); and
- Saskatchewan (*Labour Standards Act*, s. 44.2).

Parental Leave

Page 156, Last Paragraph [Paragraph number?]
There is some evidence to suggest that extensive parental leave systems may contribute to a "glass ceiling" women continue to face. It is hypothesized that extended leave may reduce career commitment and (or) depreciate human capital, which in turn may hinder women's long-term career prospects (Fredman 2005b, 6; OECD 2005, 78). Fudge argues that the design of leave and benefit provisions often has the effect of reinforcing the traditional sexual divisions of labour relating to care obligations (Fudge 2006, 81). Fredman adds that many men continue to be discouraged from taking parental leave, in part as a result of continued assumptions regarding the gender division of labour within households (Fredman 2005b, 20).

Page 157, Paragraph 2
Current federal parental leave provisions provide less protection than those of most other Canadian jurisdictions, which generally permit each parent to take the full period of parental leave.

Each parent may take the maximum period of parental leave in nine Canadian jurisdictions, if they meet relevant eligibility requirements:

- British Columbia — *Employment Standards Act*, ss. 51 and 54;
- Manitoba — *Employment Standards Code*, ss. 58–59.1;
- Newfoundland and Labrador — *Labour Standards Act*, ss. 43.3 to 43.9;
- Northwest Territories — *Labour Standards Act*, ss. 34–39;
- Nova Scotia — *Labour Standards Code*, ss. 59B–60;

- Nunavut — *Labour Standards Act*, s. 34–39;
- Ontario — *Employment Standards Act*, 2000, ss. 48–49 and 51–53;
- Quebec — *Act respecting Labour Standards*, ss. 81.10–81.17;
- Saskatchewan — *Labour Standards Act*, ss. 29.1–29.2.

Compassionate Care Leave

Page 158, Paragraph 3
In their briefs to the Commission, the Canadian Auto Workers (CAW), the Workers Action Centre, and the Confédération des syndicats nationaux argued that the requirement to have a doctor state a family member will likely die within 26 days to secure unpaid compassionate care leave is excessive. Moreover, very few doctors would provide such a written statement (Carstairs 2005, 24; CAW 2005; Workers Action Centre 2005, 36). The CAW stated, "members are often outraged" when they learn of the requirement and suggested that the "serious illness or serious accident" requirements found in Saskatchewan and Quebec would be more than adequate to secure compassionate care leave (CAW 2005, recommendation 5.4).

Page 158, Paragraph 4
Currently, two provincial statutes provide leave allowing workers to care for family members suffering serious illness or injury, regardless of whether their condition is fatal:

- In Saskatchewan, an eligible employee may take up to 12 weeks' leave per year due to serious illness or injury of an immediate family member (spouse or a child, parent, grandparent, or sibling).
- In Quebec, an eligible employee may take 12 weeks' leave over 12 months to care for a family member (spouse, child or the child of spouse, or parent, step-parent, sibling or grandparent) with a serious illness or accident. *Act respecting Labour Standards* of Quebec, s. 79.8; and *Labour Standards Act* of Saskatchewan, s. 44.2).

Sharing of Compassionate Care and Family Illness Leave

Page 158, Paragraph 5
Manitoba, Nova Scotia, Quebec and Saskatchewan provide up to eight weeks of compassionate care or family illness leave to all eligible employees or caregivers — that is, leave not required to be shared among caregivers. Similar provisions came into force in British Columbia in April 2006.

However, in Prince Edward Island, New Brunswick, Newfoundland and Labrador, Ontario and Alberta, the eight weeks of compassionate care leave *must* be shared between the eligible employees or caregivers providing care or support to the same family member.

Rest and Break Periods

Page 160, Paragraph 4
Rules governing meal and other breaks are specifically outlined in all jurisdictions except in the federal domain and Nova Scotia.

All remaining jurisdictions have provisions outlining minimum rest periods, though jurisdictional differences exist. However, all jurisdictions provide at least 24 hours' consecutive time off per week, while some provide up to two days per week.

Page 161, Paragraph 1
Employer-reported data from the FJWS indicates that full-time employees on average worked 5.1 days per week and generally worked 43.6 hours per week (FJWS 2004, table 8).

Breastfeeding

Page 161, Paragraph 2
In its official submission, the Moms for Milk Breastfeeding Network outlined the benefits of breastfeeding for mothers and children and recommended that the *Canada Labour Code* be revised to better support breastfeeding mothers in the workplace. It noted that breastfeeding is protected under the gender equality provisions of the *Canadian Charter of Rights and Freedoms* and under provincial human rights codes, and that in Ontario and British Columbia the rights of breastfeeding-employed mothers are expressly stated. The Network also recommended the adoption of International Labour Organization (ILO) convention 183 and ILO recommendation 191 under Part III of the Code, which would ensure mothers' rights to have access to one or more daily breaks or a reduction in work hours for breastfeeding.

ILO Maternity Protection Convention

Page 161, Paragraph 2
The Maternity Protection Convention of the ILO (convention 183) calling for nursing breaks was revised in 2000 but has not been ratified by Canada. Article 10 of this convention reads:

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks, and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly (ILO, http://www.ilo.org/ilolex/english/convdisp2.htm)

Vacation Leave

Page 162, Paragraph 5
According to a 2006 Expedia.ca survey, many Canadians would like additional vacation leave and one in five (22 percent) would accept a pay reduction for additional leave time (Expedia.ca 2006).

Page 162, Paragraph 5
Vacation entitlements under Part III lag behind those of several Canadian jurisdictions and the vast majority of OECD countries.

In all Canadian jurisdictions, employees are entitled to two weeks' (10 working days') paid vacation for each completed year of service, except in Saskatchewan, where employees are provided three weeks (15 working days) of paid holiday. Employees are entitled to an additional week of vacation after five consecutive years in Alberta, British Columbia, Manitoba and Quebec. In the federal jurisdiction, workers become entitled to a third week of paid vacation after six years of service.

By international standards, Canada lags behind most OECD countries, except Mexico, which provides six days' paid leave, and the United States (federal), which does not have a statutory minimum. The European Union's Working Time Council Directive (2003/88/EC) states that member countries "shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks."

Page 163, Paragraph 1
Data from the FJWS 2004 (tables 3, 36) indicates that 84.9 percent of workers covered by Part III (or 713,000 of the total 840,000 workers) are employed by organizations that report providing 20 or more days' vacation to full-time workers who have at least 10 years' continuous service.

Data from the 2004 FJWS further suggests that federal jurisdiction employers tend to be fairly generous with respect to vacation time, relative to the minimums set out in the *Canada Labour Code*.

If the Code were changed to provide three weeks of paid holiday after five years (instead of the current six years), Labour Program estimates suggest that 55,000 workers would be affected (about 7 percent of workers covered by Part III). The additional cost of this extra vacation time would likely be negligible.

Page 164, Paragraph 2
Part III says nothing specific on the issue of vacation fractioning, which is permitted in all but two provinces. Legislation in the territories is also silent on the issue of dividing vacation time.

While legislation in New Brunswick is silent on the issue of fractioning, Prince Edward Island legislation explicitly states that annual vacation must be provided in an unbroken period (*Employment Standards Act* of Prince Edward Island, s. 11(1)(a)).

In Alberta (Employment Standards Code, s. 37), Nova Scotia (*Labour Standards Code*, ss. 32(1)(a) and 32(2)), and Saskatchewan (*Labour Standards Act*, s. 31), employees are allowed to take annual vacation in an unbroken period but, if they desire, can generally break up their leave into shorter periods.

In Quebec (*Act respecting Labour Standards*, ss. 68–71.1), employees are also generally entitled to take annual leave in an unbroken period.

In Newfoundland and Labrador (*Labour Standards Act*, ss. 8(2.1)–(3)), the employer must permit the employee to take annual vacation in one unbroken period, or in multiple periods of at least one week, if the employee provides a written request prior to becoming eligible to take leave.

In British Columbia (*Employment Standards Act*, s. 57(3)), Manitoba (*Employment Standards Code*, ss. 37–38), and Ontario (*Employment Standards Act, 2000*, ss 35–35.1), employers must generally allow employees to take leave in periods of at least one week.

Page 164, Paragraph 4
Source for unused vacation time: Expedia.ca (2006).

Statutory Holidays

Page 165, Paragraph 2
Regarding paid statutory holidays, the federal jurisdiction is among the more generous jurisdictions in Canada:

- 10 statutory holidays are provided in the Northwest Territories;
- 9 statutory holidays are provided in the federal jurisdiction, Alberta, British Columbia, Nunavut, Saskatchewan and Yukon.
- 8 statutory holidays are provided in Ontario and Quebec;
- 7 statutory holidays are provided in Manitoba and New Brunswick;
- 6 statutory holidays are provided in Newfoundland and Labrador, and Prince Edward Island; and
- 5 statutory holidays are provided in Nova Scotia.

Costs and Benefits of Work–Life Balance Practices

Page 167, Paragraph 1
Lowe (2005) notes that the actual costs and benefits of family-friendly policies have not been adequately measured in research, which reflects difficulties in calculating "return on investment data." He adds, "there are methodological weaknesses in the research in employer outcomes related to investments in work–life initiatives ... costs are rarely identified or measured, performance improvements are not weighed against costs, performance outcomes are not well defined, family-friendly policies are weakly conceptualized, the intensity of employers' commitment is rarely measured, and effects of work–family policies on organizational performance rely on worker or manager perceptions rather than on direct measures of performance" (Lowe 2005, 48).

For some issues, such as absenteeism, turnover and lateness, cost–benefit analyses can generally be gauged. However, for issues such as recruitment and encouraging employee discretionary effort, the effect of workplace practices on outcomes is hard to measure accurately (Lowe 2005, 37, 44).

Creation of Saskatchewan's Work and Family Unit

Page 168, Paragraph 1
Saskatchewan Labour has a unit dedicated to work–life balance. The unit is "committed to finding ways to help Saskatchewan workplaces become more family-friendly. The Work and Family Unit works with Saskatchewan people, organizations, businesses and communities to help shape work environments that meet the needs of the 21st century economy while, at the same time, building and strengthening the Saskatchewan tradition of caring for family and community."

Specifically, the Work and Family Unit's mandate is to:

- provide leadership and coordinate government activities to help reduce the negative impacts of people's inability to balance their work and family responsibilities; and
- work with business, labour and community organizations to help them develop and implement work and family strategies.

(http://www.workandfamilybalance.com/about-us.htm)

Chapter Eight

Termination of the Employment Contract

EIGHT
TERMINATION OF THE EMPLOYMENT CONTRACT

SECTION 1: INTRODUCTION

Page 170
The provisions for notice of termination and termination pay in lieu of notice, severance pay, group termination of employment, and enabling an employee to challenge an alleged unjust dismissal are set out in Divisions IX, X, XIV and XI, respectively, of Part III of the *Canada Labour Code*. Sections 209.3, 239, 240, and 256(1) prohibit dismissal of employees in contravention of Part III — including in retaliation for the exercise of rights under the Code — and enable the convicting judge to sanction such conduct by imposing fines.

SECTION 2: THE EMPLOYMENT CONTRACT AND THE CIVIL COURTS

Page 171, Paragraph 3
Section 168(1) of the *Canadian Labour Code* specifies that Part III and all regulations made under this part apply notwithstanding any other law or any case custom, contract or arrangement, but nothing in this part shall be construed as affecting any rights or benefits of an employee under any law, custom contract or arrangement that is more favourable to the employee than his or her rights or benefits under Part III.

Page 171, Paragraph 4
The history and evolution of the law of wrongful dismissal in Canada are reviewed in England, Christie and Christie (1998), chapters 15 to 17. From the same authors, chapter 1 also provides information on the evolution of the employment law and the bargaining power between employer and employees. Moreover, Heath (2000), through court decisions, provides an examination of the law of wrongful dismissal from its historical, 19th-century contractual origins to its pre-*Wallace* (*Wallace v. United Grain Growers Ltd.*, [1997], 152 D.L.R. (4th) 1 (S.C.C.)) modernization in the 20th century.

Page 172, Paragraph 2
Data on the length of notice to be given to long-serving employees was taken from comprehensive tables of judgments provided by David Corry, partner in the Calgary offices of Gowling, Lafleur & Henderson law firm. These tables are on file with the Commission.

Among studies showing that most wrongful dismissal actions are brought by highly paid workers, Wagar's study (1996, 47) found effectively that:

> The results of the study reveal that court actions on the basis of wrongful dismissal were more common among senior male employees in higher status occupations.

For details on the importance of plaintiff characteristics (in particular, occupational status, years of service, and whether the individual had found subsequent employment), as well as the labour market facing the former employee and the result of the court's assessment of reasonable notice or other remedies, see also McShane (1983), McShane and McPhillips (1987), and Wagar and Jourdain (1992).

The remedies available through unjust-dismissal adjudication under Part III are set out in sections 242(4) of the *Canada Labour Code*.

SECTION 3: TERMINATION FOR LEGITIMATE BUSINESS OR ECONOMIC REASONS

3A: NOTICE OF TERMINATION AND TERMINATION PAY

Page 173, Paragraph 2
The requirement to provide notice of termination or pay in lieu of notice can be found in section 230(1) of the *Canadian Labour Code*.

Page 173, Paragraph 3
Information on the minimum notice of intention to quit required of employees under provincial jurisdiction in Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Yukon is provided by HRSDC (2005b) in the table attached as Appendix 1.

The problem of failure by employees to give notice of intention to quit in the trucking industry is discussed in Chow (2006) at pages 100–1. Briefs from trucking industry employers stated that failure of employees to give notice can cause serious disruption in a context of a shortage of drivers.

3B: SEVERANCE PAY

Page 174, Paragraph 1
Part III requirements to provide severance pay are set out in section 235 of the *Canadian Labour Code*.

Severance and termination pay requirements in the various Canadian jurisdictions are summarized by HRSDC (2005) in the table attached as Appendix 2.

Page 174, Paragraph 2
The 2004 FJWS data shows that a majority of employers with 20 or more employees provided more than two days of severance pay on average per year of service to employees who were laid off with no expectation of recall in 2004. Employers employing 20 or more employees account for 95 percent of employment in the federal jurisdiction.

It is not possible to provide precise estimates of the costs of severance pay recommendations, given the limitations of currently available data. However, the following observations suggest that their impact would be modest. First, as noted above, the FJWS data shows that a majority (close to 60 percent) of employers with 20 or more employees provided more than two days of severance pay on average per year of service to employees who were laid off with no expectation of recall in 2004. Employers employing 20 or more employees account for 95 percent of employment in the federal jurisdiction. Second, in the FJWS sample year of 2004, only 18,500 employees out of a total federal jurisdiction workforce of approximately 840,000 were laid off permanently, a layoff rate of 2.2 percent. Finally, the average number of years of continuous service of a permanently laid off employee was two years and four months, which suggests that the recommendation to increase the severance pay provided to long-service employees would not affect the cost of the majority of layoffs.

3D: DISENTITLEMENT TO SEVERANCE PAY

Page 175, Paragraph 2
Generally speaking, section 230(1) of the *Canada Labour Code* requires an employer who terminates the employment of an employee to provide that employee with either at least two weeks' written notice of the intention to terminate the employment relationship or two week's pay in lieu of such notice. In addition, section 235(1) entitles employees to receive severance pay under most circumstances where their employment has been terminated by their employer. The requirement that the employer must terminate the employee has a negative effect on an employee who commences employment with another employer during the notice period as the

employee, not the employer, is considered to have ended the employment relationship first, by quitting. By doing so, the employee becomes disentitled to severance pay under Part III.

Section 235(2)(b) of the Code denies employees the right to severance pay if they are "entitled to a pension" at the date of termination of employment.

Page 175, Paragraph 3
In Canada, labour laws do not specify the retirement age for employees, except in the case of some professions, such as airline pilots, military personnel, judges and firefighters. The provisions covering mandatory retirement vary from one jurisdiction to another. In six provinces, mandatory retirement after age 65 is allowed, with some exceptions. These provinces are British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan. In the other four provinces and the three territories, mandatory retirement at any age is viewed as discriminatory. These are Alberta, Manitoba, Prince Edward Island and Quebec, as well as Northwest Territories, Nunavut and Yukon. See the comparative table attached as Appendix 3 to.

Page 176, Paragraph 3
For comparative information on severance pay requirements in other Organization for Economic Co-operation and Development countries, see OECD (2003), the table attached as Appendix 4.

SECTION 4: TERMINATION FOR JUST CAUSE

Page 178, Paragraph 1
The evolution of the law of unjust dismissal is discussed in England (2005) at p. 38ff.

4B: ACCESS TO ADJUDICATION

Page 178, Paragraph 3
Data on claims for unjust dismissal come from the Labour Program report "Unjust Dismissal Complaints and Alternative Dispute Resolution Settled by District within Time Period 2004-04-01 to 2005-03-31," LAB 011a.

Page 178, Paragraph 4
Data on the number of cases heard and decided per year come from the Unjust Dismissal Research System (UDRS), internal Labour Program statistics.

4D: DISPOSING OF UNJUST-DISMISSAL COMPLAINTS PRIOR TO A HEARING

Page 181, Paragraph 2
The times between filing of a complaint and appointment of an adjudicator, between the appointment of an adjudicator and the hearing of the case, and between the hearing and the rendering of a decision were calculated on the basis of figures compiled by the Labour Program in an internal report in fiscal years 2001/2002, 2002/2003 and 2003/2004.

4E: DELAYS IN HEARING AND DECIDING CASES

Page 181, Paragraph 4
As noted above, the average time between hearings and the rendering of a decision in fiscal year 2003/2004 was calculated on the basis of figures compiled by the Labour Program in an internal report. Similarly, England (2006), at pages 36–7, reports that between 1999 and 2002, the average delay between the date an adjudicator was appointed and the date of his or her award was approximately seven months.

4H: THE APPOINTMENT, POWERS AND JURISDICTION OF HEARING OFFICERS

Page 183, Paragraph 2
England (2006) notes that adjudicators are often not well trained with respect to section 240 of the *Canada Labour Code*, particularly with respect to applying "make whole" remedies, and argues that the complexity of fashioning "make whole" remedies and other specialized aspects of section 240 procedures make it important to ensure competent adjudicators; see page 58.

Page 183, Paragraph 3
England (2006) recommends that those hearing cases of unjust dismissal under Part III should be given powers to excuse non-compliance with statutory time limits under special circumstances, to dismiss clearly unmeritorious cases short of a full hearing, to grant interim relief in certain circumstances, and to deal with abuses of process; see page 21.

Data on the use of reinstatement as a remedy in response to findings of unjust dismissal are taken from the UDRS, internal Labour Program, statistics covering fiscal years 2001/2002, 2002/2003 and 2003/2004.

There are many reasons why reinstatement is seldom utilized as a remedy in unjust-dismissal cases. The most important point is that the employee's life can become difficult or unpleasant in the face of employer opposition to a reinstatement. In this view, an empirical study

conducted by Trudeau (1991, 310) of the post-reinstatement experience of non-unionized workers in Quebec reported that approximately 67 percent of reinstated workers perceived that they had been "unjustly" treated by their employer, and approximately 38 percent of them had resigned by the time the study was carried out:

> The fact that two-thirds of these respondents stated that they had been unjustly treated by their employers after returning to work is indicative of the problems associated with reinstatement following a wrongful dismissal ... [The study] also shows that 38.5 per cent of the reinstated employees had quit their jobs by the time of the survey. Moreover, the majority of them had done so because of their employers' behaviour.

In comparison, Wagar (1987, 47) and England (2006, 54) relate that reinstatement is very successful in the unionized sector because of the presence of the union. For more information about the reasons why adjudicators seldom use reinstatement as a remedy, see England's report (2006, 48–54) and England, Christie and Christie (1998, 16.3 to 16.11.3).

Chapter Nine

Compliance

NINE
COMPLIANCE

SECTION 1: WHY COMPLIANCE IS IMPORTANT

Page 190, Paragraph 2
The provisions dealing with offences, remedies, sanctions and enforcement procedures — specifically, inquiries, inspections, recovery of wages, information and returns, deductions, combining federal works undertakings and businesses and appeals — are set out in Division I (modifications of work schedules), Division III (notifications to the Canadian Human Rights Commission), Division IX (establishment of joint planning committee when there is group termination of employees), Division XIV (unjust dismissal) and Division XVI of Part III of the *Canada Labour Code*.

Page 191, Paragraph 2
More information about "'Smart Regulation'" initiatives can be found on the federal government website. See the report to the Government of Canada by the External Advisory Committee on Smart Regulation (2004) for a proposed regulatory strategy for Canada.

SECTION 2: THE EXTENT, CAUSES AND CURES OF NON-COMPLIANCE

2A: EXTENT

Page 191, Paragraph 3
In addition to the 1997 Labour Standards Evaluation (LSE) (see HRDC 1997), the 2004 Federal Jurisdiction Workplace Survey (FJWS), and internal Labour Program case-handling statistics, research on compliance considered by the Commission included the literature reviews produced for the Commission by expert researchers (see Gallina 2005; Macklem and Trebilcock 2006); Saunders (2005); and discussions with federal and provincial officials conducted by Commission staff.

Page 191, Paragraph 4
The data on the number of complaints, the number of violations found, and rate of violation per 1000 workers was compiled using internal Labour Program figures. See Table CCS55: Part III Violations by Employer Size, Division and Business Line. *Source:* data base LA 2000 (April 2001-March 2004).

Page 192, Paragraph 1
Figures on the extent of non-compliance contained in the 1997 LSE are presented in section 4.1, "Compliance with the Code," and Appendix C, "Selected Survey Responses," of that report. See HRDC (1997). Similarly, the FJWS found that about 78 percent of federal employers had not put in place a sexual harassment policy, as required by section 247.4 of the Code.

Page 192, Paragraph 2
Gallina (2005) supports the notion that counting complaints reveals only the tip of the iceberg in compliance problems, as noted at page 41:

- Systems that rely on complaints may suffer from lack of reporting violations due to fear of reprisals, even where such activity is prohibited by legislation;
- A complaint process is ineffective to deal with non-compliance in instances of collusive breach between the employer and the worker;
- A complaint process is poorly designed to deal with non-compliance if there is little awareness of the regulations, and/or the level of awareness differs substantially among different groups. Only those who are aware of their rights can exercise them;
- Over half the complaints tend to be concerned with wage and termination issues. This may not be surprising since these issues are often the subjects of strong employer-worker disagreement. At the same time, it would be wrong to infer from the complaints that other components of labour standards are in compliance. Available data suggest the contrary is in fact the case.

Page 192, Paragraph 4
For details on the Ontario experience with the expanded mandate and new powers of the inspectorate, see Gallina (2005, 31, 32) (for the years 2000 to 2003, total prosecutions were 18; for 2004, total prosecutions were 226) and the *Employment Standards Act, 2000*, S.O. 2000, chapter 41, section 132.

Page 192, Paragraph 5
Data on the percentage of complaints under Part III filed by workers who were no longer employed in the same workplace are drawn from internal Labour Program case-handling statistics. See Table CCS145: Complaints where Employee is still Employed by Business Line. *Source:* data base LA 2000 (2004-2005).

Page 193, Paragraph 2
The percentage figures on the sectoral composition of federal jurisdiction employers are drawn from the FJWS. The percentages of total violations found in 2004–2005 attributable to the banking and road transportation sectors are drawn from internal Labour Program statistics. See Table CCS96: Road Transport Part III Legislation Violations. *Source:* data base LA 2000 (April 2001-March 2004).

Page 193, Paragraph 3
LSE findings on characteristics of employers (e.g., size, unionized or not, access to specialists) who are not in compliance with Part III are set out at pages 27 to 36 of that report. See HRDC (1997).

Page 194, Paragraph 2
For more information on the market for qualified drivers in the trucking industry, see Chow (2006, 200–2).

2B: CAUSES OF NON-COMPLIANCE

Page 195, Paragraph 1
Gallina (2005) states at pages 42–3 that lack of awareness of Part III is a major driving force behind non-compliance. See also HRDC (1997) at pages 38–9.

For a discussion of competitive pressures in the trucking industry, see Chow (2006) at pages 34–5.

The discussion of causes of non-compliance also draws on the Commissioner's impressions formed during public hearings and in reviewing stakeholder briefs to the Commission.

SECTION 3: EDUCATING AND ENGAGING STAKEHOLDERS

Page 196, Paragraph 1
For LSE findings on the role of lack of awareness in generating non-compliance, see HRDC (1997) at pages 38–9.

Page 198, Paragraph 2
Macklem and Trebilcock (2006) discuss the conditions under which

voluntary compliance strategies are most likely to succeed, at pages 44–50 of their report to the Commission.

Page 199, Paragraph 2
In Quebec, under certain circumstances (i.e., pecuniary complaints, dismissal not for good and sufficient cause), if a complaint is founded, then legal representation will be provided by the *Commission des normes du travail*, free of charge.

SECTION 4: GETTING ORGANIZED: A MORE STRATEGIC APPROACH TO SECURING COMPLIANCE

4A: COORDINATING COMPLIANCE INITIATIVES

The Inspectorate

Page 202, Paragraph 3
The 1997 LSE reached similar conclusions with respect to the combined effects of limited resources and the pressures of complaints case loads. HRSDC (1997) concludes, at page 44, that:

> the program has been limited in its preventive compliance efforts by reason of the substantial and increasing proportion of resources devoted to the investigation of complaints.

Audit Functions

Page 203, Paragraph 4
Part III of the *Canada Labour Code* creates an obligation on an employer to maintain accurate records.

Division XVI of Part III of the Canada Labour Code states:

> *Information and Returns*
>
> **252.** (1) Every employer shall furnish such information relating to the wages of his employees, their hours of work and their general holidays, annual vacations and conditions of work, and make such returns thereon from time to time as the Minister may require.
>
> *Records to be kept*
>
> (2) Every employer shall make and keep for a period of at least thirty-six months after work is performed the records required to be kept by regulations made pursuant to paragraph 264(a) and those records shall be available at all reasonable times for examination by an inspector.

Exception

(3) Subsections (1) and (2) do not apply in respect of hours worked by employees who are

(a) excluded from the application of Division I under subsection 167(2); or

(b) exempt from the application of sections 169 and 171 pursuant to regulations made under paragraph 175(1)(b).

R.S., 1985, c. L-2, s. 252; R.S., 1985, c. 9 (1st Supp.), s. 18; 1993, c. 42, s. 38.

Notice to furnish information

253. (1) Where the Minister is authorized to require a person to furnish information under this Part or the regulations, the Minister may require the information to be furnished by a notice to that effect served personally or sent by registered or certified mail addressed to the latest known address of the person for whom the notice is intended, and that person

(a) where the notice is sent by registered or certified mail, shall be deemed to have received the notice on the seventh day after the day on which it was mailed; and

(b) shall furnish the information within such reasonable time as is specified in the notice.

Proof of service of notice

(2) A certificate purporting to be signed by the Minister certifying that a notice was sent by registered or certified mail to the person to whom it was addressed, accompanied by an identifying post office certificate of the registration or certification and a true copy of the notice, is admissible in evidence and is proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the certificate.

Proof of failure to comply

(3) Where the Minister is authorized to require a person to furnish information under this Part or the regulations, a certificate of the Minister certifying that the information has not been furnished is admissible in evidence and in the absence of any evidence to the contrary is proof of the statements contained therein.

Proof of documents

(4) A certificate of the Minister certifying that a document annexed thereto is a document or a true copy of the document made by or on behalf of the Minister shall be admitted in evidence and has the same force and effect as if it had been proven in the ordinary way.

Proof of authority

(5) A certificate under this section signed or purporting to be signed by the Minister is admissible in evidence without proof of the Minister's appointment or signature.

R.S., 1985, c. L-2, s. 253; 1993, c. 42, s. 39.

Legal Functions

Page 204, Paragraph 2
According to Justice Canada, the *Department of Justice Act* (J2, s. 5), prevents departmental staff lawyers from undertaking advocacy functions.

4B: ADJUDICATION OF COMPLAINTS

Making the adjudication system transparent

Page 211, Paragraph 1
The reference to labour standards as "Labour laws little sister" originates in Fudge (1991).

SECTION 5: GETTING TOUGH: PROACTIVE ENFORCEMENT, IMPROVED PROCEDURES, ENHANCED REMEDIES, NEW FORUMS

5A: TARGETED AND PROACTIVE ENFORCEMENT

PPage 211, Paragraph 3
LSE data on deliberate violations by employers are set out at HRDC (1997, 27, 36).

Labour Program figures on employers subject to 10 or more complaints per year are set out in an internal Labour Program case-handling statistics. See table CCS90: Part III Repeat Offenders. *Source*: data base LA2000, April 1999 - March 2004. (Labour Program).

Page 212, Paragraph 3
Details on the division of time of Labour Program compliance staff between pro-active and reactive work are provided in an internal Labour Program case-handling statistics. See table CCS47: Part III Division Time between Proactive and Reactive Assignments. *Source*: data base LA2000 (April 1999 - March 2004). (Labour Program).

5B: IMPROVED PROCEDURES

Page 214, Paragraph 4
Wage recovery statistics for fiscal year 2005/2006 are provided in an internal Labour Program case-handling statistics. See table CCS177: Part III Value of Unpaid Wages Recovered by types of Tools Employed and by Region. *Source*: data base LA2000 (April 2004 - March 2006).

Page 215, Paragraph 2
Current Labour Program policy regarding third-party complaints is set out in OPD-700-10 (July 15, 2002), section 7.2, "Complaints Handling – Part III of the *Canada Labour Code* and the *Fair Wages and Hours of Labour Act*." Regarding complaints from parties who wish their identities to be withheld, see OPD-700-8 (September 10, 1993), section 7.3(2), "Inspections – Part II and Part III of the Canada Labour Code in Order to Maintain the Anonymity of the Complainant," and section 260 in the *Canada Labour Code*.

For more information on whistle-blower protection under the *Canada Labour Code*, see section 249(1), (2), (3), and (4).

5B(2) UNFAIR LABOUR PRACTICES

Page 220, Paragraph 2
The responsibilities of the Ontario Labour Relations Board with respect to the enforcement of Ontario labour standards legislation are set out in Part XXIII, sections 116 to 124, of the *Employment Standards Act*, 2000, S.O. 2000, chapter 41. For example,

> 116. (1) A person against whom an order has been issued under section 103, 104, 106, 107 or 108 is entitled to a review of the order by the Board if, within the period set out in subsection (4), the person,
>
> (a) applies to the Board in writing for a review;
>
> (b) in the case of an order under section 103, pays the amount owing under the order to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount; and

(c) in the case of an order under section 104, pays the lesser of the amount owing under the order and $10,000 to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount.

2000, c. 41, s. 116 (1); 2001, c. 9, Sched. I, s. 1 (25).

Page 221, Paragraph 2
The Canada Labour Code, section 256(1) and (2), provides the current penalty structure under Part III. The comparable provision under Ontario legislation can be found in section 132 of the *Employment Standards Act, 2000*, S.O. 2000, chapter 41.

Page 221, Paragraph 3
The section 258(2)(b) under Part III of the *Canada Labour Code*, the convicting court may, in addition to any other punishment, order the employer to reinstate the employee in his or her employ at such date as in the opinion of the court is just and proper in the circumstances and in the disposition that the employee would have held but for such discharge.

5D: NEW FORUMS

Page 226, Paragraph 1
For Supreme Court decisions on the responsibilities of arbitrators to deal with breaches of all employment-related legislation in addition to breaches of a collective agreement, see especially *Parry Sound (District) Social Services Administrative Board v. O.P.S.E.U., Local 324*, [2003], 230 D.L.R. (4th) 257 (S.C.C.) and Weber v. Ontario Hydro, [1995], 125 D.L.R. (4th) 583.

For Ontario legislation to similar effect see Ontario legislation also denies unionized employees access to the enforcement machinery established under the *Employment Standards Act*. See the *Employment Standards Act, 2000*, S.O. 2000, chapter 41, section 99(1) and (2).

Chapter Ten

Workers Most in Need of Protection

TEN
WORKERS MOST IN NEED OF PROTECTION

SECTION 1: INTRODUCTION: THE VULNERABILITY SYNDROME

Defining vulnerability

Page 230, Paragraph 2
For additional information on the characteristics and consequences of vulnerability, see technical annex to Chapter 2, as well as Bernstein (2005) and Saunders (2003, 2006).

Protecting workers against vulnerability

Page 230, Paragraph 4
Bernstein (2005) and Saunders (2006, 29-52) also discussed the different policy programs that can contribute to the protection of workers against precariousness. Saunders proposed various measures aimed at helping vulnerable workers, such as raising the minimum wage, developing income supplement programs for workers living in poverty, improving access to statutory and non-statutory benefits, and providing more opportunities for educational and skills development opportunities.

SECTION 2: WORKERS MOST IN NEED OF PROTECTION: DEMOGRAPHIC AND OCCUPATIONAL CHARACTERISTICS

Incidence of low income

Page 231, Paragraph 3
The percentage of Canadians aged between 25 and 64 working for less than $10.00 per hour is reported in Morissette and Picot (2005, p. 8).

The proportion of employees working in federally regulated industries who earned such low income is found in the 2004 Federal Jurisdiction Workplace Survey 2004 (FJWS).

Proportion of non-standard work in the Canadian labour market

Page 231, Paragraph 4
Data on the proportion of non-standard work (full-time temporary, part-time permanent, part-time temporary, own-account self-employed) in the Canadian labour market is taken from Vosko, Zukewich and Cranford (2003, table 1).

Proportion of non-standard work in the federal jurisdiction

Page 231, Paragraph 4
The percentage of non-standard contractual arrangements in the federal jurisdiction and the concentration in the road transportation sector were recalculated to include workers not considered employees and tabulated using data from tables issued by Statistics Canada based on the FJWS.

Characteristics of non-standard work and vulnerability in the Canadian workforce

Page 232, Paragraph 1
In terms of benefits coverage, Zeytinoglu and Cooke (2004, p. 14, figure 2) confirmed that non-standard workers have lower non-wage benefits coverage than permanent full-time employees. See the non-statutory benefits section of these notes for further discussion of these findings.

Page 232, Paragraph 2
For additional information on demographic groups particularly affected by vulnerability, such as women, young workers, visible minorities, and recent immigrants, as well as aboriginal workers, see technical annex to Chapter 2. See also: Saunders (2006), Chaykowski (2005a, 2005b), Cooke-Reynolds and Zukewich (2004), and Fleury and Fortin (2004).

Page 232, Paragraph 3
According to jobquality.ca, a website maintained by the Canadian Research Policy Networks, under the "Quality Employment Indicators Project," low-wage jobs are found in all major industrial sectors: manufacturing, primary industries, and services. Over half of the jobs in clothing manufacture and leather (58 percent) and accommodation and food services (53 percent) pay less than $10.00 per hour. The incidence of low wages is also high in agriculture (41 percent), retail trade (35 percent), and management support and administration (33 percent).

In addition, Morissette and Johnson (2005, table 4-5) provided data on the percentage distribution of hourly wages in selected industries. In 2004, the authors found that 12.7 percent of employees 25 to 64 years of age working in manufacturing earned less than $10.00 per hour, and

the incidence of low hourly wages was much higher at 43.9 percent for employees of the same demographic group working in low-skilled services such as retail trade and accommodation and food services.

Page 232, Paragraph 4
Li Wai Suen (2000) highlighted poor working conditions of migrant farm workers, such as working very long hours. Suen also discussed the workers' vulnerable bargaining position with regard to negotiating better employment conditions with their employer — the farmer who usually provides lodging and food as well as employment — namely because of language and cultural barriers as well as the fear of retaliation in the form of repatriation or being "blacklisted."

Evidence of the economic vulnerability of young workers is discussed in many vulnerable workers and low-wage studies. Based on Statistics Canada data, Saunders (2006, p. 14) found that 45 percent of full-time full-year youth workers (between 15 and 24 years of age) who are not students earn low wages (less than $10.00 per hour). Similarly, Chaykowski (2005b, p. 39) reported that 38 percent of workers in this group earned less than the low income cut-off (LICO) for the year 2000. After analysis, the author concluded that workers in the youngest age category were much more vulnerable than older age groups (p. 50). Non-standard work is also an issue for youth workers.

According to Human Resources and Social Development Canada (HRSDC) (2005a), 13 percent of workers aged 15 to 24 were involuntary part-timers. In addition, young workers in the 25 to 34 age bracket also experience symptoms of vulnerability. The proportion of these workers who are low paid increased considerably during the last two decades: in 2000, the figure was 16.3 percent, up from 11.7 percent in 1980. This troublesome trend is even more important for young males of that age category: the proportion of low paid workers almost doubled from 6.6 percent in 1980 to 12.2 percent in 2000 (Morissette and Picot 2005; 9, table 5). According to the same authors, less-educated young men in the 25-to-34 age group, as well as men and women under 25 years of age, were more likely to earn low wages while living in low income in 2000 than in 1980 (see p.15, table 11).

Characteristics of non-standard work and vulnerability in the federal jurisdiction

Page 232, Paragraph 1
This is largely confirmed in the federal domain where temporary and permanent part-time employees (6 percent) are more likely to receive low wages than full-time permanent employees (1 percent) (FJWS 2004, Table: Non-standard Workers).

Moreover, employers are at least twice as likely to offer to full-time permanent employees over part-time and temporary employees extended health benefits (four times more likely), dental benefits (four times more likely), insurance benefits (four times more likely), and pension benefits (between two and three times more likely) (FJWS 2004, table 55B).

Page 232, Paragraph 2
Vulnerable workers (contract self-employed, agency, part–time, and temporary) are mainly found in banks (37 percent), which are female dominated; in road transport (19 percent); and in telecommunication and broadcasting (15 percent), which are male dominated (FJWS 2004, Table: Non-standard Workers).

Also, in the FJWS federal jurisdiction employers reported that on average, only two percent of their employees were paid less than $10.00 per hour, which is much lower than the $19.00 rate reported for the overall Canadian labour market. However, low pay in federal jurisdictions appeared to be concentrated in particular sectors and among small firms. The incidence of being paid less than $10.00 per hour:

- was higher in the feed, flour, seed and grain sector (11 percent), and in the air (6 percent), maritime (5 percent), and road transport (4 percent) sectors; and
- reached as high as 14 percent in smaller work places. Within firms of six to nine employees the percentage of low-paid employees declined to 7 percent; for firms with 20 to 99 employees the percentage dropped to 4 percent; and in firms of 100 and more employees the percent of low-paid workers was 2 percent.

About 0.1 percent of federal jurisdiction employees received the minimum wage (FJWS 2004).

SECTION 3: WORKERS MOST IN NEED OF PROTECTION: NON-STANDARD CONTRACTUAL ARRANGEMENTS

3A: AGENCY AND TEMPORARY WORKERS

Proportion of temporary work in the federal jurisdiction

Page 233, Paragraph 3
Figures on the extent of workers employed on a temporary basis are based on Commission and Labour staff tabulations of the FJWS, Table: Non-standard Workers.

Reducing labour costs through temporary and agency work

Page 233, Paragraph 5

Vosko (2000, pp. 169-170) analysed data from Statistics Canada's 1995 Survey of Work Arrangements and found that temporary agency workers earned not only considerably less wages than permanent employees in the same occupational groups, but also earned less than other non-agency temporary workers. In 1995, temporary agency workers earned an average of $10.33 per hour, while the average for other temporary workers was $12.38 per hour. For instance, according to the results of the survey, the average hourly wages for permanent clerical employees was $12.92, compared with almost half this amount for temporary agency workers at $7.06, and for other temporaries at $10.64. The author attributed the wage differential between different types of temporary workers to the "mark-up, that is, the portion of the service fee that goes to the agency." Similar results were reported in Schellenberg and Clark (1996, p. 17) even though factors such as age, education, industry, and unionization were taken into account. An inference can be drawn from this information that allows us to presume that if temporary workers were employed directly by the client firm, they would most likely have a higher rate of pay.

In 2003, temporary workers earned 16 percent less per hour than their permanent counterparts ($16.69 versus $19.98). From 1997 to 2003, the gap varied between 16 percent and 19 percent (Statistics Canada, Perspectives January 2005, vol. 6, no 1).

Moreover, Vosko (2000, pp. 170-172) also found that permanent employees and other temporary workers had better access to benefits than temporary help workers. For example, the survey showed that a mere 8.2 percent of temporary agency help workers enjoyed extended health coverage, compared with 64.3 percent of permanent employees and 19.3 percent of other temporaries. Furthermore, only 2.2 percent of temporary help workers received dental coverage in 1995 versus 16.5 percent of all temporary workers and 60 percent of permanent workers.

According to Vosko (2000, p. 165), employment agreements drafted by employment agencies and signed by workers engaged by them typically contain a clause that refrains workers from inviting or accepting an "offer of employment made by the customer without prior consent of the agency." This clause generally informs the worker of the possibility of a "placement fee" being charged to the client firm in the event it directly hires the worker. Based on interviews conducted with agency branch managers, Vosko concluded that the object of such clauses is to "prolong the service contract [between the agency and the client firm], maintaining the temporary help worker on the payroll of the agency as

long as possible." However, these assumptions are not based on a thorough and representative sample survey and are consequently somewhat limited.

According to the FJWS, employers under federal jurisdiction are at least twice as likely to offer extended health (four times more likely), dental (four times more likely), insurance (four times more likely) and pension benefits (between 2 and three times more likely) to full-time permanent employees as to part-time and temporary employees (FJWS 2004, table 55B).

Page 234, Paragraph 2
The Bernier, Vallée and Jobin report (2003) mentions the various difficulties resulting from the lack of clear identification of the real employer of the agency employee. Determining the real employer will depend on whether an employee is a temporary replacement or performs the same functions on a permanent basis for a client-business. In spite of the global approach developed by the Supreme Court of Canada in *City of Pointe Claire v. Union of Professional Office Employees, Local 57*, and in spite of other decisions rendered under the *Act respecting Labour Standards*, or under the *Act respecting industrial accidents and occupational diseases*, it seems that this was not enough to eliminate any ambiguity among the actors involved.

Regulating the placement industry

Page 234, Paragraph 4
For additional information on constitutional barriers to federal regulation of temporary help providers, see Professor Robert Howse's research report presented to the Commission (Howse 2005; section VI).

3B. PART-TIME WORKERS

Page 237, Paragraph 2
Figures on the proportion of part-time work in federally regulated industries are taken from Commission and Labour staff tabulations of the FJWS 2004 (Table: Non-standard Workers):

- in 2004, under federal jurisdiction there were 103,000 permanent and non-permanent part-time employees;
- in particular, there were 84,000 permanent part-time employees, including employees with no time worked; and
- there were 19,000 non-permanent part-time employees, including employees with no time worked.

Data taken from the 2001 Survey of Income and Labour Dynamics reported by Kapsalis and Tourigny (2004, tables 3.4 and 6.2c) can be used to infer that a significant number of families depend on the income of a part-time worker. First, 5,460,000 (33 percent) of Canadian workers aged 16 to 69 were non-standard workers (part-time, temporary, and own-account self-employed) in 2001. Given that 2,529,000 (15 percent) of Canadian workers were part-time employees, it can be calculated that 45 percent of non-standard workers were part-timers during that year. On the other hand, 54 percent of lone parents holding non-standard jobs worked part-time during that year. In addition, 19 percent of non-standard workers who were the main income recipients of their families were part-timers. These high percentages suggest that a very high proportion of Canadian households depend on part-time workers and their income.

For detailed information, as well as additional sources pertaining to involuntary part-time work, see technical annex to Chapter 2.

Based on data taken from the 2002 Labour Force Survey, Vosko, Zukewich and Cranford (2003) found that women held more than 60 percent of part-time temporary jobs and almost 75 percent of part-time permanent positions.

Page 238, Paragraph 2
Part-time workers are characterized by many attributes generally associated with vulnerability. According to Chaykowski (2005a), in his report to the Commission (pp. 11-16, table 1), part-time workers were much less likely than their full-time counterparts to have access to benefits coverage. Chaykowski estimated that 15 to 20 percent of part-time workers had access to various benefits compared with approximately 75 percent of full-time workers. Additionally, these non-standard workers had a very high incidence of low earnings. As much as 68 percent of part-time employees working yearlong had low individual earnings (below the LICO). The proportion is still troubling when the economic family income is factored in: almost one-quarter of full-year part-time workers experienced low family earnings (pp. 29-33, tables 9a and 10a).

3C. BENEFITS FOR WORKERS IN NON-STANDARD EMPLOYMENT RELATIONSHIPS AND SMALL AND MEDIUM ENTERPRISES (SMES)

(1) Statutory benefits

Page 238, Paragraph 4
Part III of the *Canada Labour Code* confers several rights and entitlements to employees, many of which are predicated upon the accumulation of

a defined period of "continuous service" with the same employer:

- Vacation pay: According to section 184, every employee who has completed six consecutive years of continuous employment by one employer is entitled to three weeks of vacation leave with pay. Section 183 defines "vacation pay" as four percent or, after six consecutive years of employment by one employer, six percent, of the wages of an employee during the year of employment in respect of which the employee is entitled to vacation.
- Maternity and parental leave: Under sections 206(a) and 206.1(1), an employee must complete six consecutive months of continuous employment with an employer to qualify for maternity leave and parental leave.
- Bereavement leave: Similarly, section 210(2) stipulates that an employee must complete three consecutive months of continuous employment by an employer in order to be entitled to bereavement leave with pay. Otherwise, the employee is entitled only to unpaid bereavement leave.
- Sick leave: Under section 239(1)(a), an employee must have completed three consecutive months of continuous employment by the employer in order to be entitled to unpaid sick leave protection.
- Unjust dismissal: As stated in section 240(1)(a), an employee must have completed 12 consecutive months of continuous employment by the employer in order to be entitled to make a complaint of unjust dismissal.
- Severance pay: Finally, section 235(1) states that the employee, having completed 12 consecutive months of continuous employment with the employer, is entitled to severance pay, with the amount being two days of wages for each completed year of employment, with a five-day minimum.

(2) Non-statutory benefits

Limited access to non-statutory benefits for non-standard workers and SME employees

Page 239, Paragraph 3
Findings in Zeytinoglu and Cooke (2004, p. 14, figure 2) confirm that employers provided fewer non-statutory benefits to non-standard workers. While three-quarters of regular full-time employees received at least one non-wage benefit in 1999, only 39 percent of permanent part-time employees, 46 percent of temporary full-time employees, and 35 percent of temporary part-time employees obtained such coverage. The same

trend was true for benefits bundle coverage: almost 40 percent of regular full-time employees enjoyed bundles of non-wage benefits compared with roughly 10 percent of regular part-time employees and temporary full-time employees, and fewer than five percent of temporary part-time employees. The authors based their analysis on Statistics Canada's 1999 Workplace and Employee Survey and they targeted the private sector.

Moreover, as already mentioned above, employers were at least twice as likely to offer extended health (four times more likely), dental (four times more likely), insurance (four times more likely) and pension benefits (between two and three times more likely) to full-time permanent employees as to part-time and temporary employees (FJWS 2004, table 55B).

Employer justifications for limiting access to non-statutory benefits

Page 240, Paragraph 2
The Bernier report (2005, p. 56) confirms that coverage of non-wage benefits to non-standard workers is very difficult because of the discontinuous relationship with the employer:

"As has been demonstrated here, it is impossible, for all useful purposes, to give non-standard employees the same benefits and pension and group insurance plans as those enjoyed by full-time permanent employees.

Although we may well imagine formulas under which permanent part-time employees might be afforded benefits on a proportional basis, this is impossible for occasional or temporary employees, or those whose relationship with the employer is discontinuous in time and space."

Possible approaches to providing coverage to non-standard workers

Page 240, Paragraph 4
On February 16, 2006, following the release of the "Final Report and Recommendations of the Commission on Improving Work Opportunities," the Minister of Labour of Saskatchewan announced that the government would immediately start working with experts regarding the extension of supplementary medical and pension benefits to vulnerable workers.

Page 241, Paragraph 1
The "facility insurance model" has been established by Facility Association, which is an association funded by all automobile insurers in each of the jurisdictions in which it operates (Alberta, Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Northwest

Territories, Nunavut and Yukon). It ensures that drivers unable to obtain insurance with an individual company are able to obtain the coverage they need to legally operate their vehicles. For more details, see: http://www.facilityassociation.com.

SECTION 4: WORKERS MOST IN NEED OF PROTECTION: YOUNG PEOPLE AND WORKERS ON TEMPORARY WORK PERMITS

4A. CHILDREN AND YOUNG WORKERS

Youth employment regulation

Page 242, Paragraph 2
As explained by the Labour Law Analysis report (2001) from the Labour Program (HRSDC), the employment of children and young persons subject to compulsory school attendance is severely limited during school hours. There are limited exceptions. For example:

- Alberta allows absences from school for children under 16 to participate in an approved work experience program; and
- Quebec law provides that a child may be excused from school for a limited period of time by the school board, at the request of the parents, to attend urgent work.

Page 242, Paragraph 3
Work outside school hours is generally allowed:

- In Alberta, children aged 12 to 14 may work up to two hours outside normal school hours on a school day, or eight hours on other days;
- In New Brunswick, Newfoundland and Labrador, and Prince Edward Island, children under 16 may work no more than eight hours (six in New Brunswick) on a non-school day, and three hours on a school day;
- The restrictions are the same in Nova Scotia, except they apply to children under 14;
- In New Brunswick, Newfoundland and Labrador and Nova Scotia, work and school combined may not exceed eight hours for children covered by these provisions; and
- All five of these provinces, as well as the federal jurisdiction, Quebec, Northwest Territories and Nunavut, prohibit night work

for children unless this is permitted in certain jurisdictions by a parent, guardian, or the labour standards authorities.

Page 242, Paragraph 4
The elimination of child labour is one of the four fundamental principles of the ILO Declaration on Fundamental Principles and Rights at Work. The two fundamental ILO Conventions that relate to this are Convention 138 on Minimum Age for Employment and Convention 182 on the Worst Forms of Child Labour, which was adopted by the International Labour Conference in June 1999 and has quickly become one of the ILO's most ratified conventions (Canada ratified Convention 182 on June 6, 2000).

4B. DOMESTIC AND AGRICULTURAL WORKERS ON WORK PERMITS

Foreign workers in Canada

Page 243, Paragraph 1
Each year thousands of foreign workers enter Canada, and some leave since they are in Canada only on a temporary basis. In 2005, 99,000 foreign workers entered Canada as temporary residents. Of these, 17,000 entered as seasonal workers (so it was not their first time in Canada), and 82,000 entered the country for the first time. Cumulated over time, in Canada at the end of 2005 there were 152,000 foreign workers, of which 146,000 had a valid work permit. See Citizenship and Immigration (2006).

Initiatives of the federal government

Page 243, Paragraphs 2 and 4
The Seasonal Agricultural Worker Program (SAWP) allows the organized entry of foreign workers to work in agricultural labourer occupations in Canada. The SAWP was developed by HRSDC and Citizenship and Immigration Canada (CIC) in cooperation with agricultural producers and a number of foreign countries, including Mexico and several Commonwealth Caribbean countries.

The SAWP currently operates in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island, and meets the needs of specific agricultural commodity sectors.

Page 243, Paragraph 3
HRSDC's role with respect to the entry into Canada of temporary foreign workers is to provide CIC and employers with a labour market opinion (LMO). HRSDC assesses employer requests against set criteria such as

recruitment effort for Canadian workers, and confirms that wages and working conditions are consistent with those prevailing in Canada for the occupation. If a positive LMO is issued then the foreign national can apply to CIC for a work permit.

In addition, the CIC publication, "Welcome to Canada: What You Should Know," found on the CIC website, encourages foreign workers who feel unfairly treated to communicate with an officer of the Minister of Labour, the Canadian Human Rights Commission, or HRSDC.

Vulnerability of migrant workers

Page 243, Paragraph 4
Foreign workers are susceptible to intimidation, as explained in a report by the North-South Institute (2006: pp. 4, 6,13), and in the submission of S. Raper, national coordinator for the agricultural program of the United Food and Commercial Workers Union, to the Standing Committee on Citizenship and Immigration (October 2006: pp. 5,6).

As an example of media coverage of incidents concerning abuse of foreign workers, see a May 26, 2005 article by S. O'Hanley on Montreal Haitian workers who were found to be victims of discrimination: "Segregation alive and well?"

SECTION 5: MINIMUM WAGE

Policy goals fulfilled by minimum wage legislation

Page 245, Paragraph 1
The various rationales for minimum wage legislation are outlined and critically assessed in Prof. Morley Gunderson's study (2005) for the Commission. According to the study, a minimum wage can contribute to a reduction in poverty, reduce wage inequality, place a floor on market transactions, eliminate low wage jobs and encourage employers to move up the value-added chain, provide an incentive to leave maintenance programs, increase aggregate demand and generate multiplier effects, help pay for rising tuition fees, protect the unprotected (those who have little bargaining power), protect the already protected from low-wage competition, reduce the need for unions if the state can provide the protection and provide a model to be emulated by others jurisdictions. (For details on these rationales, see Gunderson (2005a, pp. 1-8).)

Page 246, Paragraph 1
The minimum wages in the federal jurisdiction follow the minimum wages in the jurisdictions where the federally protected workers are employed. As Prof. Gunderson suggests in his study, this policy might be justified if provincial minimum wage rates reflected local differences, but this is not the case. (See Gunderson 2005a, pp. 47-49.)

Emergence of "living wages" in foreign jurisdictions

Page 245, Paragraph 1
The Consumer Price Index (CPI) provides a broad measure of the cost of living in Canada. For information on provinces' minimum wage adjustments and CPI through the last two decades, see HRSDC's database on minimum wages. And, for CPI, see Statistics Canada Consumer Price Index.

Page 246, Paragraph 2
For details on the introduction of the minimum wage in 1999 in the United Kingdom, see Stewart (2004).

According to Battle (2003, p. 250), Canadian minimum wages are relatively low when compared with other advanced industrialized nations. Nevertheless, following the example of the United Kingdom, more states and cities have been adopting "living wage" policies. For example, Santa Fe has one the highest minimum wages in the United States. In June 2004, Santa Fe became one of three cities in the United States to pass a city-wide minimum wage applying to private businesses. The city's increase to $8.50 an hour — a 65 percent increase — affected all businesses within city limits employing more the 25 people. The wage floor increased to $9.50 on January 1, 2006. Details can be found at:
http://www.nytimes.com/2006/01/15/magazine/15wage.html.

From a European point of view, more than three-quarters of the members of the European Union have a legal minimum wage. Details are provided at: http://www.eiro.eurofound.ie/2005/07/study/tn0507102s.html. Moreover, in April 2005, researchers from Germany, France, and Switzerland presented theses for a European minimum wage policy, according to which every country in Europe should guarantee a national minimum wage. The researchers proposed a national minimum wage norm that corresponds to 60 percent of the average national wage. As a short-term target, however, the researchers called for a norm of at least 50 percent of the national average wage in order to prevent the expansion of the working poor. Details are provided at:
http://www.eiro.eurofound.ie/2005/05/inbrief/de0505203n.html.

Low wages and vulnerability

Page 246, Paragraph 4

The overall results of Chaykowski's (2005b) research suggested that worker's work arrangements affect their vulnerability. For example, workers with low pay, few benefits, and little opportunity for training or advancement bore considerable risk of employment security (pp.1-4, 50). To support this statement, Saunders (2006) provides data on the links among worker characteristics, types of work, and low earnings — and consequently, on workers' vulnerability. He states that non-standard workers — those not in paid, permanent, full-time employment with a single employer — are typically excluded from such non-statutory benefits. Citing Marshall (2003, pp. 5-12), Saunders relates that while 58 percent of full-time workers and 57 percent of permanent workers were covered by an insurance package in the year 2000, only 17 percent of part-time workers and 14 percent of temporary workers benefited from this cluster.

Low-paid workers also have poor access to employer-sponsored training. Data from the 2001 Workplace and Employee Survey shows that fewer than 20 percent of workers who were paid less than $10.00 per hour benefited from employer-sponsored classroom training, compared with over 45 percent of those paid $20.00 or more per hour (p.24).

Economic impact of a minimum wage increase

Page 247, Paragraph 5

As noted by Gunderson (2005a), the impact of increasing national minimum wage might lead to job losses, especially among young workers and less-educated individuals. For details, see pp. 9-10, as well as Prof. Yelowitz (2005) and his experience with minimum wage in the United States. On the other hand, there are a number of studies that find zero or positive employment effects, such as Card and Krueger (1995, p. 2000). Relating to the United Kingdom experience, a number of studies, such as Stewart (2004), show that there was no statistical significant adverse employment effect for adults or youth, or for men or women, but some studies, such as Machin et al. (2003), found a conventional adverse effect on employment, essentially in low-paid sectors.

The OECD, reviewing evidence from pooled, cross-country data over time, finds the employment effects of increasing minimum age for prime-age adults (25-54) close to zero, and not significantly different from zero for young adults (20-24). For teenagers, results suggest a two-to-four percent employment decline for a 10-percent increase in minimum wage (OECD, 1998, pp. 45-47). Current evidence on the employment effects of

the national minimum wage suggests that these effects have been small or non-existent, and if there is a small effect, it is on the low-paid sectors. All of these studies have their own methodological limitations. The employment effect of minimum wages remains a highly contentious issue.

Page 248, Paragraph 1
Details on the characteristics of employers and workers in federally regulated workplaces are provided in Section 3, above.

Page 248, Paragraph 3
Statistics Canada has been producing low income cut-offs (LICOs) since the late 1960s. According to Statistics Canada (2004), LICOs, which are established using data from the Survey of Household Spending, are meant to convey the income level at which a family may be in straitened circumstances because it has to spend 20 percent more of its income on food, shelter, and clothing than the average family of similar size. There are separate cut-offs for seven family sizes, and for five community sizes, from rural areas to urban areas with populations of more than 500,000. LICOs receive criticism for failing to take into account large geographical variations in housing costs (Statistics Canada, 2004, pp. 6-7).

Unlike the United States, Canada has no official poverty line. LICOs have been employed to determine low-income prevalence for various socio-economic groups. But as related by Hunter and Miazdyck (2003), a LICO is not a poverty lines real strength might be its useful inclusion of average incomes, which reflect the upward movement of capital over time.

Erosion of the purchasing power of Canadian minimum wages

Page 249, Paragraph 2
According to Battle (2003, p. 6), the overall minimum wage in Canada sharply increased from 1965 to its peak in the mid-1970s. It slightly decreased until the mid-1980s or early 1990s, then saw one of three trends throughout the rest of the 1990s and into the first decade of the new century: modest improvements (PEI, Manitoba, Alberta and BC), flattening out (Newfoundland, Nova Scotia, New Brunswick, Saskatchewan and Yukon), or decline (Quebec, Ontario, the Northwest Territories and Nunavut).

Also, the author relates that minimum wages are not indexed to the cost of living or to other basic economic indicators. Consequently, their value fluctuates over time, depending on the frequency and amount of changes in rates compared with the rates of inflation. For example, the minimum wages fail to lift single-parent families with one child, and all one-earner couples with two children, above the after-tax poverty line for the largest cities throughout Canada (p.16).

According to Prof. Gunderson (2005a), governments have a tendency to simply ignore the minimum wage for long periods of time, with the result that its purchasing power erodes due to inflation. On page 7, Gunderson notes, "There is empirical evidence that minimum wage setting in Canada follows a race to the middle based on governments responding to voters' notion of fairness ... largely by not altering the minimum wages so that its real value gets eroded by inflation."

Chapter Eleven

Labour Standards in a Dynamic Economy

ELEVEN
LABOUR STANDARDS IN A DYNAMIC ECONOMY

SECTION 1: INTRODUCTION

Working conditions in the federal jurisdiction

Page 252, Paragraph 3
Data from the Federal Jurisdiction Workplace Survey 2004 (FJWS) indicates that 32 percent of federal jurisdiction workers were covered by a collective agreement.

On the whole, federal jurisdiction employees tend to be offered working conditions that are equal, or better, than what is generally made available to the national workforce.

When compared against the national workforce, a very small share of federal jurisdiction employees earns low pay. Whereas only two percent of federal jurisdiction employees were paid less than $10.00 per hour in 2004, this was the case for one in five workers (19 percent) in the national workforce.

Federal jurisdiction workers were also more likely to have access to employer-sponsored insurance and pension plans. Federal jurisdiction employers reported that half (54 percent) of their workers had access to insurance, and a quarter (28 percent) had access to a pension plan. By comparison, only 36 percent of the national workforce had access to insurance, and only 19 percent had access to an employer-sponsored pension.

Restrictiveness of labour standards

Page 253, Paragraph 1
A recent OECD study examined so-called "strictness of employment protection" of labour legislation in 28 industrialized countries. The report determined that Canada had among the *least* restrictive labour regulations among the 28 countries considered. In fact, the OECD determined that only the United States and the United Kingdom had less restrictive employment regimes than Canada (OECD *Employment Outlook 2004*, pp. 71-72).

SECTION 2: PROMOTING FLEXICURITY

European Union experience

Page 254, Paragraph 1
Wilthagen (October 2004) provided some examples of flexicurity policies in the EU and other countries:

- In Denmark an "inherent" and long-standing connection, or nexus, exists between numerical flexibility and generous levels of social security, facilitated by active labour market and reintegration policies: the so-called golden triangle.
- In the Netherlands trade-offs have and are being made between external numerical — notably temporary agency work — and employment security rather than job security. The 1999 *Law on Flexibility and Security* and the collective labour agreement in the temporary agency sector are prime examples of this trade-off. See also Wilthagen and Tros (2004).

Page 254, Paragraph 3
The provisions dealing with group termination are set out in Division IX of Part III of the *Canada Labour Code*.

Severance pay

Page 255, Paragraph 3
Comparative information and more details on severance pay is provided in the technical annex to Chapter 8.

SECTION 3: ENHANCED HUMAN CAPITAL FORMATION: EDUCATION AND TRAINING

Page 258, Paragraph 1
Obstacles to investment in training are discussed in Charest (2006, pp. 16-17) and HRDC (2002a, p. 12). Charest also refers to OECD reports.

OECD (July 2002) reviewed the adequacy of learning opportunities for adults in Canada, and assessed the participation and access to learning by adults.

OECD (2003) found that job-related training supports improved career prospects. Some workers may fall into low-wage traps but training can reduce this risk. It also showed that some under-represented groups receive little training for many reasons, such as employers' lack of incentive to invest in human capital, or workers themselves having a lack of interest in learning activities.

OECD (2005d) showed empirical evidence that training can improve workers' chances of keeping their job.

SMEs and skills development

Page 258, Paragraph 3
The 2001 Workplace and Employee Survey of Statistics Canada showed that "small businesses are less likely to provide training activities to their employees than medium-sized and large businesses. However, it is clear that once they commit to investing in employee training, small businesses do so as intensively as medium-sized and large firms. Moreover, the decision of whether to train their employees is clearly related to the business strategies employed by the firm. In particular, the incidence of training in small businesses that pursue an innovation and growth strategy is closer to the incidence of training in medium-sized and large firms than that of other small businesses. In addition, firms that have incentive schemes, use technology intensively or are innovative also exhibit a much higher incidence of training across all firm sizes."

Skills Training — The federal Workplace Skills Strategy program

Page 259, Paragraph 1
Detailed information on the Workplace Skills Strategy can be found on the HRSDC website at http://www.hrsdc.gc.ca/en/ws/index.shtml and in the HRSDC DPR 2005–2006 at http://www.tbs-sct.gc.ca/dpr-rmr/0506/HRSDC-RHDSC/hrsdc-rhdsc06_e.asp.

Page 260, Paragraph 1
Charest (2006) mentioned that "over the last twenty years in Canada, there have been many studies and reports on the issues involved in the development of human capital, and a number of avenues have been proposed for improving our performance in this area. Stakeholders have often been divided on the possible options, and in essence we have opted for a voluntary, incentive-based approach in devising our institutional arrangements. The best-known innovation in this area is our sectoral human resource councils. Quebec has been the one exception, with the passage in 1995 of legislation requiring employers to allocate 1% of their payroll to workforce training. Along with this coercive measure, however, Quebec has also relied on incentive-based support mechanisms, social dialogue and service delivery, with its sectoral workforce committees, the Commission des partenaires du marché du travail [labour market partners commission] and Emploi-Québec."

The author also mentioned that "among the forms of government action identified, the best-known are tax credits, legislation requiring financial

participation in training, like the law in France or the 1% law in Quebec, and measures that target workers directly, like education leave or training leave. Despite the criticism they generate, tax credits are in common use worldwide. We find, moreover, that they are often linked to specific programs, such as apprenticeship programs, which makes it easier to target precise goals or objectives and avoid overly generalized 'windfalls.'

"Criticism is also aimed at the coercive approach requiring mandatory employer contributions that is in place in a number of countries, although it is not the dominant trend according to the OECD. More recently, some countries have adopted the general principles of demand reinforcement and introduced such measures as individual 'learning accounts.' This experiment is still in the early stages, and no empirical assessment of its effects is available."

"Training bonds" in the air transportation industry

Page 261, Paragraph 1
Air Line Pilots Association, International (2005) raised, in a formal brief to the Commission, the issue of "protection against training bonds, and particularly against training bonds whose terms are overreaching and exploitative."

Educational leave

Page 262, Paragraph 3
More information on programs and obstacles to study or sabbatical leaves can be found in Charest (2006). Also, the technical annex to Chapter 3 provides information on paid educational leave in Europe.

SECTION 4: PROMOTING BEST PRACTICES, TRUST AND HIGH PERFORMANCE IN THE WORKPLACE

Page 263, Paragraph 2
According to Lowe & Schellenberg (2001) and Lowe (2005), healthy and supportive work environments are important in establishing strong employment relationships. Workers who enjoy strong employment relationships generally report having: helpful and friendly co-workers; interesting work; a healthy and safe workplace; reasonable work demands; an employer that supports work-life balance and an employer that provides adequate resources to properly perform their job. The authors also noted that strong employment relationships benefit employers and can improve firm performance by improving job satisfaction, increasing skill development and skill use, boosting workplace morale and lowering rates of absenteeism.

High performance workplace systems

Page 263, Paragraph 3; Page 264, Paragraph 4
In a recent literature review of workplace productivity, Gunderson (2002, p. iii) concluded that many new workplace practices commonly associated with high performance workplace systems (HPWS) — job design, greater employee involvement, pay for performance, flexible work arrangements, multi-skill training and workplace well-being programs — often increase employee satisfaction, commitment, motivation and worker effort. For the author, these outcomes often lead to reduced employee absenteeism and tardiness, enhanced firm performance, increased employee productivity and generally improved firm competitiveness.

Resistance to HPWS

Page 265, Paragraph 2
According to Gunderson (2002, pp. 23-29), despite evidence indicating that HPWS can often bring positive results for employers and workers, new workplace practices can be met with resistance by workers and managers. In instances where HPWS have been shown to be beneficial, it remains unclear whether their success is the result of unique characteristics of the workplace or whether such benefits could be duplicated elsewhere. Moreover, many small businesses may lack needed information and resources to successfully introduce HPWS practices into their workplace.

Some managers may resist the introduction of innovative workplace practices, especially if they are of the view that such practices could undermine their power in the workplace. The long time horizons needed to realize many of the benefits of HPWS may discourage senior management from implementing them, especially if their focus is on quarterly business returns.

Employees may also resist HPWS practices. Workers may perceive these new workplace practices as a threat to the traditional way they have performed their jobs. They may also feel that job security would be undermined. In the event new skills are needed to implement new workplace practices, employers may be reluctant to make the necessary training investments out of fear that workers may be poached by competitors.

Appendices

APPENDIX 1
MINIMUM WRITTEN NOTICE REQUIRED (FROM THE EMPLOYEE)

ALBERTA

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service:

- More than three months but less than two years of service: one week notice.
- Two years of service or more: two weeks notice. (s. 58 of the *Employment Standards Code*)

If an employee gives the minimum termination notice required and the employer wishes to terminate the employment before the end of the notice period, the employer is required to pay the employee an amount at least equal to the wages the latter would have earned for regular hours during the remainder of the notice period given by the employee.

If an employee gives a longer notice period and the employer wishes to terminate the employment before the end of that notice period, the employer must pay an amount at least equal to the wages the employee would have earned had he worked his regular hours for the remaining notice period the employer would be required to give him under the Code. (s. 59)

MANITOBA

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service:

- Less than on year of service: one week notice.
- One year of service or more: two weeks notice. (s.62.1 of the *Employment Standards Act*)

If an employee gives minimum notice of termination and the employer wishes to end the employment before the end of the notice period, it must

provide the employee with a period of notice that is the shorter of: (1) the minimum generally required of employers under the Code; or (2) the period beginning when the employer gives notice of termination and ending when the employment would otherwise be terminated by the employee. (s. 61, 77.1) In lieu of notice, the employer may also pay the employee the wages that the employee would have received had he/she worked his/her regular hours of work at the regular wage rate for the required period of notice, in addition to any other wages owed in lieu of the applicable notice period. (s. 77)

Where employees are served notice of individual or group termination by their employer and wish to end their employment before the date specified in the notice, they are required to provide the minimum notice that is required of employees under the Code (i.e., 1 or 2 weeks, depending on their length of service). (s. 62.1, s.77.1(2))

NEWFOUNDLAND AND LABRADOR

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service (note that an employer must give the same notice if it wishes to terminate an employee's employment):

- Three months or more but less than two years of service: one week notice.
- Two years or more but less than five years of service: two weeks notice.
- Five years or more but less than ten years of service: three weeks notice.
- Ten years or more but less than fifteen years of service: four weeks notice.
- Fifteen years of service or more: six weeks. (s. 52, 55 of the *Labour Standards Act*)

The above notice provisions do not apply to an employee covered by a collective agreement or written contract of service that contains notice of termination provisions whereby the required period of notice is the same for the employer and the employee. (s. 51)

Instead of giving notice, an employee may pay to his/her employer an amount equal to what the employee would normally earn under the contract of service during the required period of notice, including overtime wages (based on overtime worked in the one-month period preceding the termination of employment). (ss. 54(1)(b), 54(3))

If the employee fails to provide the required notice or pay in lieu when terminating his contract of service, the employer may, with the consent of the employee, deduct the amount in lieu of notice from unpaid wages due to the employee. If the employee does not consent to the deduction, the employer must deposit that amount with the Director of Labour Standards who will determine the issue. (s. 54(1)(b), s. 54(2))

NOVA SCOTIA

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service:

- At least three months but less than two years of service: one week notice.
- Two years of service or more: two weeks notice. (s. 73(1) of the *Labour Standards Code*)

If an employee fails to provide the required notice or pay in lieu of notice, an employer may file a complaint with the Director of Labour Standards who will examine the issue. A person who has made such a complaint and who is not satisfied with the result may then make a complaint to the Labour Standards Tribunal for a determination of the matter. (s. 78)

Failure to give notice is an offence punishable by a fine on summary conviction. (s. 94)

ONTARIO

An employee to whom notice has been given as part of a group termination of employment may not terminate his/her employment without first giving the employer at least *one week's* written notice —if the period of employment is less than two years—or at least *two weeks*, if the period of employment is two years or more. Such notice is not necessary if the employer constructively dismisses the employee or breaches a term of the employment contract, whether or not such a breach would constitute a constructive dismissal. (s. 58(6), (7) of the *Employment Standards Act, 2000*)

An employee who takes pregnancy or parental leave may not terminate her/his employment before the leave expires or, when it expires, without giving the employer at least four weeks' written notice of termination. (ss. 47(4), 49(4))

PRINCE EDWARD ISLAND

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service:

- Six months or more but less than five years of service: one week notice.
- Five years of service or more: two weeks notice. (s. 29 of the *Employment Standards Act*)

Failure to comply with a provision of the *Employment Standards Act* is an offence punishable by a fine on summary conviction. (s. 38)

QUEBEC

The *Act respecting labour standards* contains no provisions requiring an employee to provide a notice of termination. However, the *Civil Code of Québec* (C.C.Q.) specifies that either party to a contract of employment with an indeterminate term must, barring a serious reason, provide notice to the other party before terminating the contract. The notice of termination must be given in reasonable time, taking into account the nature of the work, the special circumstances in which it is carried on, and the duration of the period of work. (ss. 2091, 2094 C.C.Q.)

YUKON

Subject to certain exceptions, an employee must provide the following notice to the employer, based on length of service:

- Six consecutive months or more but less than two years of service: one week notice.
- Two years or more but less than four years of service: two weeks notice.
- Four years or more but less than six years of service: three weeks notice.
- Six years of service or more: four weeks notice. (s. 50(2) of the *Employment Standards Act*)

Where an employee terminates his/her employment without having given the prescribed notice, the employer may deduct from the employee's wages, with the consent of the employee, an amount equal to one week's wages at his/her regular rate of pay for his/her normal hours of work. Where the employee does not consent to the deduction, the employer must pay the amount to the Director of Employment

Standards. The Director must then determine whether the employee was required to give notice under the Act and whether or not it would be inequitable in the circumstances to deprive the employee of his/her wages, before deciding who, whether the employer or employee, is entitled to that amount. (s. 52)

NB: Employment/labour standards legislation in the federal jurisdiction, British Columbia, New Brunswick, Saskatchewan, the Northwest Territories and Nunavut does not specifically require employees to provide their employer with a notice of termination before ending their employment.

APPENDIX 2
MINIMUM NOTICE OF TERMINATION, TERMINATION PAY AND SEVERANCE PAY (NOTICE/PAYMENT GIVEN BY EMPLOYER FOR INDIVIDUAL TERMINATION OF EMPLOYMENT)

FEDERAL

Unless dismissed for just cause, an employee who has at least three consecutive months of continuous employment with his or her employer is entitled to two weeks' notice of termination or two weeks' wages in lieu, at regular rate for regular hours. (s. 230 of the *Canada Labour Code*; ss. 31-32 of the *Canada Labour Standards Regulations*)

Moreover, an employee who has completed 12 consecutive months of employment is entitled, in addition to notice of termination or pay in lieu of notice, to either two days' wages for each completed year of employment or to a total of five days' wages (at the regular rate for regular hours), whichever is greater.

However, an employer is not required to provide severance pay to an employee who has been dismissed for just cause or who, on ceasing to be employed or before that time, is entitled to a pension under a registered pension plan contributed to by the employer or to a pension under the *Old Age Security Act*, the *Canada Pension Plan* or the *Quebec Pension Plan*. (s. 235 of the Canada Labour Code)

ALBERTA

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- More than three months but less than two years: one week;
- Two years or more but less than four: two weeks;
- Four years or more but less than six: four weeks;
- Six years or more but less than eight: five weeks;
- Eight years or more but less than ten: six weeks;
- Ten years or more: eight weeks.

Periods of employment with the same employer are considered to be one period of employment if not more than three months have elapsed between them.

Instead of giving notice of termination, an employer may pay an employee an amount equivalent to the wages his employee would have earned if he/she had worked his/her regular hours during the applicable termination notice period.

The employer can also offer a combination of termination pay and termination notice, in which case the termination pay must be at least equal to the wages the employee would have earned for the applicable termination notice period that is not covered by the notice.
(ss. 54–57 of the *Employment Standards Code*)

BRITISH COLUMBIA

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three consecutive months or more but less than twelve: one week;
- Twelve months or more but less than three years: two weeks;
- Three years or more but less than four: three weeks;
- Four years or more but less than five: four weeks;
- Five years or more but less than six: five weeks;
- Six years or more but less than seven: six weeks;
- Seven years or more but less than eight: seven weeks;
- Eight years or more: eight weeks.

An employer may pay an employee an amount of money in lieu of the written notice. This amount is calculated by totalling the employee's weekly wages, at the regular rate, earned in the last eight weeks in which the employee worked normal or average hours of work, divided by eight, and multiplied by the number of prescribed weeks of notice. An employer may give an employee a combination of written notice and money in lieu.
(s. 63 of the *Employment Standards Act)*

MANITOBA

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Less than one year — One week
- At least one year but less than three years — Two weeks
- At least three years but less than five years — Four weeks
- At least five years but less than 10 years — Six weeks
- At least 10 years — Eight weeks

Instead of giving notice of termination, an employer may pay an employee the wages that the employee would have received had he or she worked his or her regular hours of work at the regular wage rate for the required period of notice. (ss. 61-62, 77 of the *Employment Standards Code*)

NEW BRUNSWICK

Subject to certain exceptions, an employee is entitled to two weeks' notice of termination if he or she has been continuously employed by the employer for at least six months, and four weeks' notice if continuously employed for at least five years.

Instead of giving notice of termination, an employer may pay an employee an amount equal to the pay the employee would have earned during the notice period. (ss. 1, 5, 8, 29-31, 33-34 of the *Employment Standards Act*)

NEWFOUNDLAND AND LABRADOR

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three months or more but less than two years: — one week;
- Two years or more but less than five — two weeks;
- Five years or more but less than ten: — three weeks;
- Ten years or more but less than fifteen: — four weeks;
- Fifteen years or more: — six weeks.

Instead of giving notice, an employer may pay to an employee wages equal to the normal wages that the employee would have earned during the required period of notice, including overtime wages (based on overtime worked in the one-month period preceding the termination of employment). (ss. 52, 53, 55 of the *Labour Standards Act*)

NORTHWEST TERRITORIES AND NUNAVUT

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- 90 days or more, but less than three years: two weeks;
- Three years or more but less than four: three weeks;
- Four years or more but less than five: four weeks;
- Five years or more but less than six: five weeks;
- Six years or more but less than seven: six weeks;
- Seven years or more but less than eight: seven weeks;
- Eight years or more: eight weeks.

Instead of giving notice, an employer may pay termination pay to the employee. The amount of termination pay must be equal to the wages and benefits to which the employee would have been entitled had he/she worked his/her usual hours of work for each week of the required notice period. (ss. 14.03, 14.04 of the *Labour Standards Act*)

NOVA SCOTIA

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three months or more but less than two years: one week;
- Two years or more but less than five years: two weeks;
- Five years or more but less than ten years: four weeks;
- Ten years or more: eight weeks.

Instead of giving notice of termination, an employer may pay an employee an amount equal to all pay to which the employee would have been entitled, at the regular rate for a non-overtime work week, had he/she performed work during the required period of notice. (ss 72, 73, 77 of the *Labour Standards Code*)

ONTARIO

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three months or more but less than one year: one week;
- One year or more but less than three: two weeks;
- Three years or more but less than four: three weeks;
- Four years or more but less than five: four weeks;
- Five years or more but less than six: five weeks;
- Six years or more but less than seven: six weeks;
- Seven years or more but less than eight: seven weeks;
- Eight years or more: eight weeks. (ss. 54, 57)

An employer may terminate the employment of an employee without notice or with less notice than required if the employer pays the employee a lump sum equal to the amount the latter would have earned during the prescribed period of notice. The employer must also continue to make all benefit plan contributions required to maintain the benefits to which the employee would have been entitled to receive had his/her employment continued during the period of notice. (ss. 54, 57, 61 of the *Employment Standards Act, 2000*)

In addition to notice of termination or pay in lieu of notice, an employee with five years of service or more (whether or not continuous or active) who is dismissed, constructively dismissed, laid off for 35 weeks or more in a period of 52 consecutive weeks, laid off because of a permanent discontinuance of the employer's business at an establishment, or whose employer refuses or is unable to continue employing him/her, may be entitled to severance pay.

To be eligible, the employee's employment must be severed by an employer who has an annual payroll of $2.5 million or more, or the employee must be part of a group of 50 or more employees whose employment is severed in a six-month period as a result of a permanent discontinuance of all or part of the employer's business at an establishment. (ss. 63, 64)

Employees who resign after receiving notice of termination retain their right to severance pay, provided they give at least two weeks' notice to their employer. For the purpose of determining eligibility to severance pay, their employment is deemed to have been severed on the day the employer's notice of termination would have taken effect. When calculating the amount of severance pay, however, their employment is deemed to have been severed on their effective date of resignation. (ss. 63(1)(e), (3), 65(3))

The minimum amount of severance pay due to an employee is calculated by

- adding the number of years of employment completed by the employee (whether or not continuous or active), including any partial year of employment (i.e., the number of additional months of employment divided by 12); and
- Multiplying this sum by the employee's regular wages for a regular work week, for a total of up to 26 weeks of wages.

An employee's length of employment is deemed to include any period of notice of termination that should have been given by the employer under the *Employment Standards Act, 2000*. (s. 65(1) to (5))

When severance pay is being calculated, if the employee *does not have a regular work week or if the employee is paid on a basis other than time*, the employee's regular wages for a regular work week are deemed to be the average amount of regular wages earned by the employee for the weeks in which the employee worked in the period of 12 weeks preceding the date on which the employee's employment was severed or on the date on which the layoff began. (s. 65(6))

Severance pay may be paid in instalments over a period of up to three years with the agreement of the employee or the approval of the Director of Employment Standards. (66(1), (2))

PRINCE EDWARD ISLAND

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Six months or more, but less than five years: two weeks;
- Five years or more, but less than ten years: four weeks;
- Ten years or more, but less than fifteen years: six weeks;
- Fifteen years or more: eight weeks.

(s. 29(1)(a) of the *Employment Standards Act*)

This notice applies to a termination of employment or layoff.

Instead of giving notice of termination, an employer may pay an employee a sum equivalent to the employee's normal wages, excluding overtime, for the number of weeks in the prescribed notice period. (s. 29(4))

QUEBEC

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three months or more but less than one year of uninterrupted service: one week;
- One year or more, but less than five years: two weeks;
- Five years ore more, but less than ten years: four weeks;
- Ten years or more: eight weeks.
  (s. 82 of the *Act respecting labour standards*)

An employer that does not give notice of termination, or gives insufficient notice, must pay to the employee a compensatory indemnity equal to his/her regular wage, excluding overtime, for the remaining period of notice to which he/she is entitled. (s. 83 (1)) (An employee fully or partly remunerated by commission is entitled to an indemnity based on his/her average weekly wage, calculated from the complete periods of pay in the three months preceding the termination of employment or layoff.) (s. 83 (3))

This indemnity must be paid:

- at the time the employment is terminated,
- at the time the employee is laid off (if the layoff is expected to last more than six months), or
- at the end of a period of six months after a layoff of indeterminate length, or a layoff expected to last less than six months but which exceeds that period. (s. 83(2))

Where an employee is entitled to recall privileges for more than six months under a collective agreement, the employer must pay the compensatory indemnity on the date recall privileges expire, or one year after the layoff, whichever is earlier; however, an employee is not entitled to such a compensatory indemnity if he/she is recalled before an indemnity is due and subsequently works for a period at least equal to the required notice period, or if he/she is not recalled owing to a fortuitous event. (s. 83.1)

A notice of termination of employment given to an employee during a period when he/she is laid off is absolutely null, except in the case of seasonal employment that usually lasts no more than six months each year. (s. 82(3))

Under the Civil Code of Québec, either party to a contract of employment with an indeterminate term must, barring a serious reason, provide notice to the other party before terminating the contract. The notice of termination must be given in reasonable time, taking into account the nature of the work, the special circumstances in which it is carried on and the duration of the period of work. (ss. 2091, 2094 C.C.Q.)

SASKATCHEWAN

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Three continuous months or more, but less than one year: one week;
- One year or more, but less that three: two weeks ;
- Three years or more, but less than five: four weeks;
- Five years or more, but less than ten: six weeks;
- Ten years or more: eight weeks.

(s. 43 of the *Labour Standards Act*)

An employer who discharges or lays off an employee without having given notice must pay to the employee a sum equivalent to the normal wages, excluding overtime, which the employee would have earned during the prescribed period of notice. (s. 44(2))

An employer may not lay off or discharge an employee because of a shortage of work where the employee has been in the employer's service for at least 13 continuous weeks, without giving the employee at least one week's written notice for each year of employment or portion of a year of employment with the employer, to a maximum of 10 weeks' notice. (s. 43.1)

YUKON

Subject to certain exceptions, an employee is entitled to the following notice of termination, depending on his or her length of service with the employer:

- Six consecutive months or more, but less than one year: one week;
- One year or more, but less than three: two weeks;
- Three years or more, but less than four: three weeks;
- Four years or more, but less than five: four weeks;
- Five years or more, but less than six: five weeks;
- Six years or more, but less than seven: six weeks;
- Seven years or more, but less than eight: seven weeks;
- Eight years or more: eight weeks.

(s. 50(1) of the *Employment Standards Act*)

Where an employer terminates the employment of an employee without having given the prescribed notice, the employer must pay termination pay in an amount equal to the employee's regular wages for his/her normal hours of work to which he/she would have been entitled during the notice period. (s. 51)

APPENDIX 3

Note: The following table[1] outlines provisions relating to mandatory retirement that apply in the federal, provincial and territorial jurisdictions.

Forcing an employee to retire by reason of age is considered to be a human rights issue and is regulated by human rights legislation. In Quebec, provisions dealing specifically with mandatory retirement are also contained in labour standards legislation.

Jurisdiction	Provisions relating to mandatory retirement
Federal	Mandatory retirement is not considered to be discriminatory if an individual's employment is terminated because he or she has reached the normal age of retirement for employees working in similar positions.
Alberta*	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this province. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
British Columbia	Older employees are protected until the age of 65 against discrimination based on age. Consequently, employees aged 65 or over cannot file a complaint if they are obliged to retire for that reason. **(Note: On April 25, 2007, the provincial government tabled legislation to prohibit mandatory retirement).*

[1] This table is based on the document "Mandatory Retirement in Canada: Legislation of General Application", available on the website of Human Resources and Social Development Canada at: http://www.hrsdc.gc.ca/en/lp/spila/clli/eslc/19Mandatory_Retirement.shtml

Jurisdiction	Provisions relating to mandatory retirement
Manitoba	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this province. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
New Brunswick	Termination of employ¬ment because of the terms or conditions of a *bona fide* retirement or pension plan is not considered to be discriminatory under human rights legislation. However, if there is no such plan, employees who are forced to retire can file a complaint for age discrimination under the human rights legislation.
Newfoundland and Labrador	Termination of employ¬ment because of the terms or conditions of a *bona fide* retirement or pension plan is not considered to be discriminatory under human rights legislation. However, if there is no such plan, employees who are forced to retire can file a complaint for age discrimination under the human rights legislation until they reach age 65. **(Note: on May 26, 2007, the age 65 limit will be repealed with a view to ending the practice of mandatory retirement.)*
Northwest Territories*	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this territory. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
Nova Scotia	Mandatory retirement at age 65 does not constitute a discriminatory measure if it is standard in the workplace in question. However, the Human Rights Commission of this province investigates when an employee aged 65 or over is not treated in the same manner as others of the same age where retirement is concerned.

Jurisdiction	Provisions relating to mandatory retirement
Nunavut*	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this territory. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
Ontario*	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this territory. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
Prince Edward Island*	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this province. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.
Quebec	Forcing an employee to retire because of age is considered to be discriminatory under the *Charter of Human Rights and Freedoms.* In addition, the *Act respecting labour standards* stipulates that an employee is entitled to continue to work despite the fact that he has reached or passed the age or number of years of service at which he should retire pursuant to a retirement plan or the common practice of his employer. However, this right does not preclude an employer from dismissing, suspending or transferring an employee for good and sufficient reason.
Saskatchewan	Older employees are protected against age-based discrimination up to the age of 65. Consequently, employees aged 65 or over cannot file a complaint if they are obliged to retire for this reason. **(Note: the provincial government has tabled legislation to prohibit mandatory retirement; it received second reading on April 2, 2007).*

Jurisdiction	Provisions relating to mandatory retirement
Yukon	Mandatory retirement generally constitutes a discriminatory measure for employers under the jurisdiction of this territory. However, it is considered that there is no discrimination when there are *bona fide* and reasonable requirements for an employment or occupation.

- It should be noted that the human rights legislation of Alberta, Prince Edward Island, the Northwest Territories and Nunavut states that the prohibition against age discrimination does not affect the operation of any genuine retirement or pension plan. For example, this permits pension plans to provide benefits only after an employee has reached a certain age. These provisions have not been interpreted as permitting mandatory retirement. Also note that statutory provisions prohibiting mandatory retirement in Ontario came into force very recently, on December 12, 2006. However, these new provisions do not affect the operation of an employee benefit, pension, superannuation or group insurance plan or fund that complies with the *Employment Standards Act, 2000* and its regulations.

APPENDIX 4

Notice periods and severance pay for individual dismissals at three lengths of service (source: OECD, 2003):

		NOTICE PERIOD			SEVERANCE PAY		
		9 MONTHS	4 YEARS	20 YEARS	9 MONTHS	4 YEARS	20 YEARS
Australia[a] (Federal jurisdiction)	All workers	1 week	3 weeks	5 weeks	0	0	0
	Redundancy cases				0	8 weeks	8/12 weeks
Austria	Blue collar	2 weeks	2 weeks	2 weeks	0	0	0
	White collar	6 weeks	2 months	4 months			
Belgium[b]	Blue collar	35 days	35 days	112 days	0	0	0
	White collar	3 months	3 months	15 months			
	Claeys formula for white collar	3 months	6 months	21 months			
Canada[c]	Varies depending on the jurisdiction	1-2 weeks	2-4 weeks	2-8 weeks	0	0-4 weeks	0-20 weeks
	Average over Quebec, Ontario, Alberta and British Columbia	1 week	3.4 weeks	8 weeks	0	1.8 weeks	9 weeks
Czech Republic	All workers	2 months	2 months	2 months	0	0	0
	Redundancy cases	3 months	3 months	3 months	2 months	2 months	2 months
Denmark	Blue collar	3 weeks	8 weeks	10 weeks	0	0	0
	White collar	3 months	4 months	6 months	0	0	3 months
Finland	All workers	14 days	1 month	6 months	0	0	0
France	All workers	1 month	2 months	2 months	0	0.6 month	4 month

		NOTICE PERIOD			SEVERANCE PAY		
		9 MONTHS	4 YEARS	20 YEARS	9 MONTHS	4 YEARS	20 YEARS
Germany	All workers	4 weeks	1 month	7 months	0	0	0
Greece	Blue collar	0	0	0	7 days	15 days	3.8 months
	White collar	30 days	3 months	16 months	15 days	1.5 month	8 months
Hungary	All workers	30 days	35 days	90 days	0	1 month	5 months
Ireland[d]	All workers	1 week	2 weeks	8 weeks	0	0	0
	Redundancy cases	2 weeks	2 weeks	8 weeks	0	9 weeks	41 weeks
Italy	Blue collar	6 days	9 days	12 days	0	0	0
	White collar	15 days	2 months	4 months			
Japan[e]	All workers	30 days	30 days	30 days	0.4 month	1.4 months	2.9 months
Korea	All workers	1 month	1 month	1 month	0	0	0
Mexico	All workers	0	0	0	3 months	3 months	3 months
Netherlands[f]	Termination via PES	1 month	1 month	3 months	0	0	0
	Termination via Court	0	0	0	0	6 months	18 months
New Zeland[g]	All workers	3 weeks	3 weeks	3 weeks	0	0	0
Norway	All workers	1 month	1 month	3 months	0	0	0
Poland	All workers	1 month	3 months	3 months	0	0	0
Portugal	All workers	60 days	60 days	60 days	3 months	4 months	20 months
Slovak Republic[h]	Personal reasons	2 months	2 months	3 months	0	0	0
	Redundancy cases				2 months	2 months	2 months
Spain	Workers dismissed for "objectives" reasons	30 days	30 days	30 days	0.5 month	2.6 months	12 months
Sweden	All workers	1 month	3 months	6 months	0	0	0
Switzerland[i]	All workers	1 month	2 months	3 months	0	0	2.5 months
Turkey	All workers	4 weeks	8 weeks	8 weeks	0	4 months	20 months
United Kingdom	All workers	1 week	4 weeks	12 weeks	0	0	0
	Redundancy cases				0	4 weeks	20 weeks
United States[j]	All workers	0	0	0	0	0	0

a) **Australia:** Notice period at 20 years of tenure is 4 weeks under the Workplace Relations Act. Here 1 week is added to account for the fact that employees over 45 years old with over 2 years' continuous service are entitled to an extra week. Severance pay at 20 year of tenure: The figure of 12 weeks reflects the updated standard for employees of businesses with 15 employees or more, which has not yet been implemented.

b) **Belgium:** For white collars, if annual salary is above 25 921 €, currently the case in over half of Belgian white collar employees, parties or courts tend to use one of a number of standard formulas – such as the Claeys formula – for severance pay in lieu of notice.

c) **Canada:** In all cases, an employee must have completed a minimum period of service in order to be entitled to notice. An employer may provide termination pay instead of notice. Final scores for notice period and severance pay are based on weighted averages over Quebec, Ontario, Alberta and British Colombia, where weights depend on the relative size of each jurisdiction in terms of working-age population (Quebec: 0.28, Ontario: 0.45, Alberta: 0.12 and British Colombia: 0.15. Overall, these 4 jurisdictions represent more than 85% of the working-age population in Canada).

d) **Ireland:** Employers are reimbursed 60% by redundancy fund financed by ordinary employer and employee social security contribution – they pay therefore, only 40%. The cost in redundancy cases is only 3.6 weeks for 4 years tenure and 16.4 weeks for 20 years tenure.

e) **Japan:** According to an enterprise survey, average severance pay (retirement allowance) equals almost 1 month per year of service, although it is not legally required. It is somewhat higher in the case of lay-offs, and lower in case of voluntary quits. The reported figures refer to the differential in severance pay between these two cases.

f) **Netherlands:** There is a dual dismissal system here. The labour courts handle 50% of the cases. The court may determine severance pay, roughly according to the formula: 1 month per year of service for workers < 40 years of age; 1.5 months for workers between 40 and 50; 2 months for workers 50 years and over (judges may apply a correction factor taking into account particulars of the case).

g) **New Zealand:** No specific notice period is required, but the duty of good faith, as well as case law, requires that reasonable notice be provided. An average has been calculated using the most common notice periods that are specified in collective agreements. No specific severance pay is required. However, about 21% of workers are covered

by collective agreements, which in most cases provide some form of redundancy pay. About 42% of employees covered by a collective agreement that provides for redundancy pay receive 6 weeks pay for their 1st year of service, and 2 additional weeks pay for every year thereafter.

h) **Slovak Republic:** In redundancy cases, after 5 years of tenure, if the employee agrees with the termination of employment relationship before the commencement of the notice period, he is entitled to receive a severance pay equal to a minimum of three times his average monthly earnings.

i) **Switzerland:** No legal entitlement to severance pay, except for workers over age 50 and more than 20 years seniority, where severance pay cannot be less than 2 months wages, with a maximum amount of 8 months wages.

j) **United States:** No legal regulations (but can be regulated in collective agreements or company policy manuals. For example, the US Labor Department's Compensation Survey shows that in 2000, 20% of all private sector workers were covered by severance pay plans. The coverage rate was higher among union (31%), than non-union (19%) workers; and for workers working in establishments with 100+ workers (32%), than in establishments with fewer than 100 workers (11%)

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